69508-8 69508-8

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

State of Washington Respondent	No. 69508-8-1
v.	Statement of Additional Grounds for Review
Jon Amadio Del Duca Appellant	

I, Jon Amadio Del Duca, have received and reviewed the opening brief prepared by the appellate attorney assigned the my case, Jared Steed. In as short as possible and still fully represent my concerns and grievances with the process that the state pressented and prosecuted me with in its total record.

I pray and beg for your pacience and diligence in striving for true justice.

Ground for Added Relief - RAP 10.10

Introduction

Honored Judges;

I am Jon Amadio Del Duca and I was convicted of 1 count of child molestation in the first degree on August 30, 2012, and sentenced on October 12, 2012, to a sentence of 68 months by Judge Lori Smith, 4.5 Additional Conditions of sentence:

The total of all terms imposed in this case is 68 months.

After trial and sentencing I informed Mr. Beatty, public defender that I wanted to appeal the validity of all proceedings on the grounds of constitutional infraction prosecutor misconduct, and procedural errors. And I also wanted to appeal the decisions Judge Roberts handed down on May 1, 2012 on the Motion for Protection and Relief from Persecution from the State of Washington, King County, and all the districts and Municipalities in the State of Washington. I was under the impression that I had a right to appeal the whole process, first 911 calls through sentencing. Whe I was told by Mr. Nielson, of Nielson Brennan & Koch, that only the time period between a final omnibus and

sentencing would be addressed at this stage of the process, and later Mr. Stee informed me that only state law would be addressed. Needless to say that I was shocked at the continued limitations being imposed on my ability to defend myself.

7 november 2011, after being told by a public defender, in open court, to keep my mouth I had nothing to do with the defence, then she said that the only things that I was to make any decisions about were on how to plead, whether to waive trial or not, and whether to testify at trial. That has been the stance of all of the public defenders and contrary to my Sixth Amendment Right "to have the Assistance of Counsel for his defence." And with that stance taken by the public defenders and being told that they were not allowed to address any other issues that did not pertain directly to the case in the paperwork given to them by the prosecution and being informed that the Bill of Rights do not apply to state matters, only federal issues and charges, I was immediately put into an adversarial position with the public defender and

that being the case, was I afforded due process, because with out the assistance of counsel to assist me to enforce my right to due process I was, as the record shows, denied my chance to be able to enforce, with the knowledge that I possessed, to enforce my civil rights and to be allowed to have a fair trial with an impartial jury.

As for me ramming John Strojan's jeep on the night of the "big chase", I did not ram into him. I was backing up in the east bound lane on a two lane road with no shoulder on the edge of the road in a motor home with no back window. I checked my passenger mirror and saw Strojan coming west bound in the west bound lane, then I checked the divers mirror to check my tracking, then rechecked the passenger side mirror again, Strojan was no longer visible, then we collided. I have no idea what he was think, nor what he wanted to accomplish, but I had no desire to damage my motor home nor his vihicle. I had seventy gallons of fuel and he might have had twenty gallons, and we, on the flat, got close to the same mpg. The math was easy my range with the fuel I

had was about six hundred and fifty miles, his was about two handred and fifty.

I have been told that my civil rights and protections granted and mandated by the U.S. Constitution and also by the original Washington State Constitution are not addressed before or at trial, nor at this stage of judicial process in Washington State. But the fact is that for our rights to be preserved and protected the constitutional standards must be applied through the whole process or they are of no value in protecting the innocent and the accused from pretrial abuses and maliciouse prosecution.

In my case the state implimints punishment as was stated in open court several times, and was not disputed by the state, with the knowledge the the case will be or might be over turned. And if the state knows that there is reasonable doubt, the state should never withhold the evidence it has or knows about and can, with diligence aquire. A lie nor withholding evidence from the defence ever serves justice, it corrupts Nor doe limitting the ability of the defendan to defend him/her self by making laws and court rules that tilt the scales of justice

in favor of the state.

I have written this letter of introductution because when Brian Beatlie discused the appeal with the member(s) of the appellet firm to tell them what to base the appeal on it was without my knowledge nor impute, nor was he presenting the issues I was concerned about. So therefore, because of the misdirection that Mr. Beatlie presented to Nielsen Browman & Koch, he made it very dificult for the firm to be able to address all of the issues involved through the whole process. Mr. Steed did put for a true problem, inefective counsel. But becaus he did not have the whole record the rest of the grounds for relief were not presented in the brief.

Additional Ground 1

No valid Arrest Warrant or Presentment

When the Skagit County Sheriffs seized me from my home I asked to see an arrest/search warrant, they laughed at me. And at no time was a valid warrant pesented for my inspection.

The 4th Amendment states "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly discribing the place to be search, and the persons or things to be seized. To preserive my right to the first part of due process and the right to be secure from unreasonable searches and seizures, the condition of the 4th Amendment have to be met. The warrant copy that I was finaly given, months later by the public defenders, was not a search warrant issued by a judge, it did not particularly discribe the place to be searched nor give a discription of the person to be seized, just a name, not even a birth date, or a physicle discription.

The second option the state has for arrest purposes is a presentment (arres warrant), issued by a grand jury. Since I did not waive my right to a grand jury/preliminary hearing either by a signed waiver nor by a guilty plea. So there for the arrest warrant was invalid because it was not issued in a legal manor. And the state did not obtain a legal search warrant to authorize the arresting officer to sieze me. And even if the state had followed legal procedures, the arresting did not produce the origanal nor a copy of the origanal warrant. He also dated the arrest warrant as being served on 04-13-11, when I was actuall arrest on 04-12-11, and spent the night in the Skagit County Jail, then transporte to the RJC on 04-13-11.

The state also use false statements to support the issuence of the warran

At no time in the begining of this process observe due process, and therefore all due procrss was denied and therefor the state eliminated its right to prosecute me, and to hold me to answer for any crime because the state broke the law.

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KING COUNTY
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SEATTLE, WA

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APR 13 2011
KING COUNTY JAIL

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

THE STATE OF WASHINGTON,
Plaintiff,
v.
JON A. DELDUCA,
Defendant.

No. 11-1-02184-6 KNT

ARREST WARRANT

To Any Peace Officer In The State Of Washington:

An information has been filed in the above entitled Court, charging **JON A. DELDUCA** with the crimes of **Child Molestation in the First Degree, RCW 9A.44.083, Count I, and Child Molestation in the First Degree, RCW 9A.44.083, Count II**, and the Court having determined that there is probable cause for the issuance of a warrant,

You are therefore commanded to forthwith arrest the said **JON A. DELDUCA** and keep him/her in custody until he/she is discharged according to law, and make due return of this writ with your manner of service endorsed thereon. Service of this warrant by telegraph or teletype is authorized.

Bail fixed in the sum of **$100,000 Cash or Surety Bond.** Cash or Surety Bond to be approved by the Court.

Arrest Warrant - CrR 2.2(c), RCW 10.31.060

The court has ordered the issuance of this warrant.

Witness my hand and Seal this MAR 09 2011 day of March, 2011.

BARBARA MINER, Clerk of Superior Court

By: T. LAMBETH
Deputy Clerk

The above warrant was served on 04-13-11 by KCSO
Agency

Fees: Service, _____
Mileage, _____
Keeping, _____
Total 45.00

Bobby G. Attorney 01852
SKAGIT

Return the Arrest Warrant (Cr.R 2.2(e))

Additional Ground 2

No Grand Jury/Preliminary Hearing

In the United States Constitution our basic rights, the foundation in which the justice systems of all states in the Union of United States of America have to use, honor, and abide by, and all laws have to meet or provide better protections for all persons in the states.

In the federal constitution the Fifth Amendment states that "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury;". The military exception does not apply in this case. And, to the best of my knowledge, the origanal Washinton State Constitution, legal law, says basically the same thing, except it goes farther in its scope and clarity, 1889- No person shall be held to answer for any felony or criminal offense of any grade, unless on a presentment or indidment of a grand jury. It also says, or on information, which is a lower standard and less protection than grand jury indictment. And the federal government came up with a solution to the issue of grand juries at state and federal levels.

In Federal Rule for Criminal Procedures, Rule 7 (b),
"If a defendant, in open court waives, after being advised of the nature of the charge and of the defendants rights, if the defendant waives prosecution by indictment. Through the whole process, not one person explained my right to me, nor asked if I needed my rights explained to me, nor did I sign a waiver.
The first attorney I talk to, after first contact by Ms. Eliot on, I think, April 26, 2011, Ms. Eliot told me that the federal grand jury right does not apply to state issues, and she gave me a copy of the 1966 decission on the right to have a grand jury handed down by the Supreme Court Chief Justice Roscellini in the manslaughter case against McCoy Kanistanaux and Venita Kanistanaux, (case no. 68 Wash. 2d 652, 414 P. 2d 784). In his decission he sites three issues used to show why the grand jury clause is not manditory to the states by the federal constitution, (1) that the Grand Jury Clause of the Fifth amendment was intended as a protection from the crown. (2) that the Fifth Amendment

Clause was not a necessary element of due process, (3) the crown abuses were not to be expected from a prosecutor, an elected representative of the people.

(1) The inference that since the crown no longer ruled over the states/colonies, it didn't apply to the states by mandate. The best answer I can give against that assumption is that the authors of the federal constitution were looking to the future not the past. And the other is that the "crown" is in practice, arrogance, still with us, as is stated in the dissenting brief of Justic Thomas in the case of Doggett v United States, 505 U.S. 647, 655 n.2. The case was about the speedy trial right which was found in favor of Doggett. Justice Thomas quoted a Latin saying, "Nullum tempus accurrit regi", time does not run against the King", and he used that quote to justify and establish the sense of authority for the next statement, "and as a criminal trial is regarded as an action brought by the King, it follows that it may be brought at any time." He is not saying

that the government is the same as the King/Crown, and by extention that we still need all of our protection against the potential of abuse by the Crown/government. after the origanal Washington State Consitution was ratified by the voters of the new state of Washington in 1889, the Washington Legislature, in an arogant move tried to usurp the power of the voter by trying to replace the origanal with a new version of the constitution drawn up by the Legislature and ratified by same, and tryimg to set aside legal law that was voter mandated, and setting the stage for the arogant opinion that state representitives rule the people and make the decissions for the people, as if the people serve the government instead of serving the people. That is why we have the federal constitution, as a sound foundation to build on and a standard that has to be met and protected before building more.

(2) he infered that the Fifth Amendment is not a necessary element of due process If that were true then it would not be the first right stated in the amendment

that all people get due process. The way we were taught is that due process was, (1) the right to complain about our governments actions, (2) to have the right to see a valid search warrant before being arrested, (3) to have the right to preliminary hearing, unless waived by defendan or a plea of guilty is entered, (4) the right of the defendant to have a speedy trial, (5) the right to be safe from cruel or unusul punishment, (6) the right to be free on reasonable bail pending trial, except in capital offences, (7) to be safe from excessive fines, (8) the right to be safe from cruel and/or unusual punishments, (9) to have fulfilled the mandate to define definitively, by the state(s), any right mandated by the federal constitution but not defined difinitively, ie speed trial, mandated by the Tenth Amendment, U.S., (10) to have the state(s) fulfill the mandate to protect all of the rights and protection reserved by the people for the people, state and federal, 14th Amendment, U.S., Section 30, Article I, Washington State Constitution, 9th Amendment, U.S..
(3) and last he inferes that the prosecutors are above reproach because they are

elected representitives of and by the people, and he sets the challenge to prove prosecutoral misconduct. So for one example I point to the public records of just King County Prosecutors Office, over 520,000 pages generated for prosecutoral misconduct in the ten year span between Jan. 1, 2002 and Jan. 1, 2012. That is on average 52,000 pages generated every year.

With these facts known I believe with all my heart, that in this case, that if a grand jury had examined all of the evidence in this case they would not have found probable cause. And without that protection I was denied the protection that the grand jury can provide, prevention of malicious prosecution, and false imprisonment because of false statements and withheld evidence.

Having a preliminary hearing one day before trial does not prevent unlawfull imprisonment.

Additional Ground 3
Speedy Trial

I was arrested on April 12, 2011, by the Skagit County Sheriff's. I signed with reluctance, a waiver of speedy trial right for a specific time period that expired on 7/17/11. I agreed to this short extention at the request of the public defenders to do investigation and to prepare for trial. They not only did not do the investigation, nor did they do the preperation, nor did I see any signes that these efforts were forth coming in the near future, so I told the public defenders, Scott Smith and Katheren Eliot that I wanted no more continuances. Niether the public defenders nor Judge Roberts allowed me to have my right to a speedy trial in the begining.

There are two main issues that the Speedy Trial was intended to prevent that I am concerned with in this case. (1) to prevent undue stress cause by lengthy pretrial incarseration and the disruption of my civil liberties for same.

Now I understand that time can be needed to prepare and investigate for my defence. This function of the defence

councels jed did not happen.

In the sixteen month time span there is not enough word done in my behalve to account for to months, let alone sixteen months, and that is why I objected to the waiving of my speedy trial right by Judge Roberts and the attornies the stat hired to deal with me.

As it turned out, I was put on trial with little more than what the prosecution provided. What little evidence was gathered in my favor was mostly barred from being presented to the jury.

The first interviews of witnesses were not started with the Strojan children until April 25, 2012, and almost none of the conflicting statements in Kylie Strojan's statements were allowed in trial, so therefore with the time that the public defenders asked for and was granted by Judge Roberts against my wishes and without consulting me or taking into consideration my objection to the infringement of my civil rights.

And the rule that the state and public defenders/attornie use to deny the "defendants right to a speed trial is CrR 3.3. The state affirm the defendant

right to have a speedy trial by stating that the defendant has to signe a waiver to be able to waive trial. It is written in 3.3 (c)(2)(i) The filing of a waiver of the defendant's rights under this rule signed by the defendant. And the waiver only moves the trial period foward to the end of the time period specified, no more unless the defendant agrees to anothe extention. And that is a good rule that works in the interest of justice. But then comes the exceptions to the rule, and some of them are clear and definitive. But there are some that are vague and operate in favor of the state and contrary to the protections intended to be for the defendant. But the worst are 3.3 (d)(2), 3.3 (e)(2), (3), (8), 3.3(f)(2), 3.3(h). Any one of these subsections of CrR 3.3 that are listed can are used to deny the defendant's right to a speedy trial. The right's first stated objection is to prevent excessively lengthy pretrial delay. And that is what happened to me. The time that the public defenders were granted beyond sixty day produced nothin. for my defence that could not have been

acomplished in the first sixty days with due diligence by the attornies.

So therefore I point out that the reason I did not receive a speedy trial is because the state has not defined definitively what a speedy trial is, as mandated in the 10th Amendment of the federal constitution and Section 22, Article I, of the Washington State Constitution, origanal 1889.

I am including the first waiver dated 5/12/12, state the new trial period was to expire on 7/17/", and anything beyond 7/21/" was a violation of speedy tial right, that is if I did not signe another waiver, I didn't.

And furthermore, submitted the motion to notify the court that I demanded speed trial right on Dec. 2, 2011, trial finally comenced in August, 2012.

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON, Plaintiff

vs.

JON A. DELDUCA, Defendant

No: 11-1-02184-6 KNT

ORDER ON STATUS CONFERENCE AND WAIVER OF SPEEDY TRIAL (KENT - GA)

SCOMIS CODES (ORST OR ORSSC)
(CLERK'S ACTION REQUIRED)

RESOLUTION DATE: Any requests for further hearings beyond the resolution date of 7/21/11 require the presence of all parties and the approval of the court.

The following dates are based upon a Commencement date of 5/19/11 Expiration Date: 7/17/11

(X) a) Status Conference Hearing: 5/19/11 at 1:00 p.m. in Courtroom GA.

( ) b) Plea/Sentencing Date: _____ at _____ a.m./p.m.

YOU MUST BE PRESENT FOR ALL HEARINGS NOTED ABOVE OR A WARRANT MAY BE ISSUED FOR YOUR ARREST AND YOUR FAILURE TO APPEAR MAY RESULT IN ADDITIONAL CRIMINAL CHARGES BEING FILED.

Waiver: I understand that I have a right to a trial within 60 days of the commencement date if I am in jail on this case, or 90 days of the commencement date if I am not in jail on this case. I am voluntarily and knowingly giving up this right for a specific period of time to allow my attorney to negotiate with the prosecuting attorney and/or investigate and/or prepare my case. I agree that the new commencement date is 5/19/11 and that the new expiration date is 7/17/11.

The speedy trial waiver, above, must be filled in if a new Status Conference hearing date is set, or a plea date is set more than one week from today's date. Strike the speedy trial waiver if it is not applicable.

I have read to the defendant and discussed this completed form, including the next hearing date and speedy trial waiver, if applicable, and believe the defendant understands it.

I acknowledge being provided with and understanding the dates set forth herein for all future court hearings. I acknowledge my speedy trial rights as set forth above.

Attorney for Defendant WSBA # 28200 — Defendant — Dated 5/12/11

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty perjury under the laws of the State of Washington that the foregoing is true and correct.

Interpreter: _____, King County, Washington

Deputy Prosecuting Attorney WSBA# _____ — Judge, King County Superior Court — Dated 05/12/2011

JUDGE MARY E. ROBERTS

REV 12/09

Additional Ground 4

Denied Counsel for the Defense

On April 4, 2012, Brian Beattie put a motion before the court to ask for addition counsel to assist me in areas that he either did not want to do or that he was not licensed/bonded to do. This was after serveral month of battle with him trying to get him to assist me to try to discredit the states case.

I had agued a PRP Motion before Judge Roberts and she had denied all of my motion and I was trying to do an appeal but needed assistance. Several portions of the motion involved pretrial conditions that the state did not meet, and Beattie refused to assist me in any way.

So on May fourth Brian Beattie informed Judge Roberts that I was asking for additional help for the appeal. And he she turned it over to me. I told her that, at that point the pretrial deficiencies that I was trying to address and have resolved through the appellate process before trial were beyond my experience and knowledge, and that I need the help

of a civil attorney to assist me because I felt that was my only defence, the protection of my civil rights, I told her I could fight smoke and mirrors, so my civil rights were my only defence. I also told her the Mr. Beattie said he was not bonded to do what I needed to do for my defence and that he did not want to do what I needed to do for my defence, and I stress that what I was trying to do was a major part of my defence. Then Mr Beattie confirmed what I said by say that he did not want to do what I needed to do for my defence and that he was not bonded for doing what I needed Judge Pickett said no. So I asked her with the specific question about counsel for my defence. I asked her "Your Honor, are you denying me counsel to assist me with my defence? She said "Yes". And that was about it. I did not know what to do after that. She would not allow me to get new counsel, and the results me righting this Brief of Ground for Additional Relief.

Counsel is in effective if a defendant is denied counsel at a critical stage of his trial.
State v. Thomas, 71 Wn. 2d 470, 471 (1969)
Judge Roberts denied me the right to have counsel to assist me with my defence after Beattie told to the court that he did not want to do what was needed for my defence, and the record showed that he not only did not assist my defence, but actually worked against me and my defence.
And for the final note, Brain Beattie and the rest of the public defenders that I have delt with, refused to abide by the R.P.C.'s dictates.

Additional Ground 5
Ineffective Counsel

It is not enough for a court to ensure that defendants enjoy access to counsel. The right to counsel serves no purpose unless its the right to effective counsel (McMann v. Richardson, 397 U.S. 759 (1970).)

At no time before, during, or after trial did any attorney, or even a paralega for the attornies, explain or provide legal materials to expain under what legal laws the state was denying my civil right to due process, and the civil rights to protect me from malicious prosecution and neglect and abuses while in pretrial incarseration and incarseration after conviction.
Nor did Brian Beattie explain to the court its failure, by not providing me effective counsel for my defence, to follow the law concerning assistance of counsel for the defence, 6th Amendment U. (State v. Carter, 112 P. 3d 861 (2001))

Brian Beattie failed to adequately prepare for trial. He also did not subpeona all necessary witnesses in the nieghborhood, John Strojan went around to all of my nieghbors and told them

I had molested his daughter, which in his statement he said he had not. Beattie was deficient in that he failed to make reasonable investigation into possible defene stratagies.
(In. re Davis, 152 Wn. 2d at 72.)
Brian Beattie told me that the prosecution offered two misdameanor sex offences for time served, but he did not tell me that the two convictions of that nature would make me elligable for an indeterminate sentence.
Failure to discuss, fully, plea bargain offer with defendant.
(State v. James, 48 Wn. App. 353, 362 (1987).)
Brian Beattie not only did not try to challenge any part of the state case in any serious or effective manner, he refused to. He refused to assist me with any of the issues I brought to him, and asking for help from the courts for abuses and neglect by jail staff members and jail medical staff would be, I would think, reasonable request, since I had and still have documentation. And Mr. Steed, in his

opening brief for relief pointed out that Brian Beattie failed to to lay proper foudation to be able to chalenge the states witnesses about previous conflicting and bizar statements by not confronting them on the witness stand about the previous statements.

He also failed to delve into the reasons why the Strojans lied about when and how many times they had called 911, or why the prosecutor did not press charges two months earlier or continue an investigation starting from the 25th August, 2010. Nor did he ask to have the court recall to the witness stand the two children to confront them about their prior confliting statements. Nor did he ask Officer Spence or Det. Prieb-Olson about the earlier 911 call(s) and Sheriffs follow up reports and the results of the earlier investigation. Nor did he assist me, in cross, to establish the alternitive explaination for the accusations (money/work), while I was on the witness stand. Nor did he point out, nor object to the fact that the state did not have the evidence to suport First Degree Child Molestation. The testemony that the

children gave in their interviews with Det. Webster they accused me of tuching them three times, their statements in that respect were identickle. The did not say that I "tickled" them, nor that I "lingered at the chest area, as Ms. Mayamasu inserte into the court record and used these words to imply the attempt to sexually gratifie. this was in the prosecutions opening statement.

And last but definitely not the least, Mr. Beattie made one comparison and one statement to the jury that made the states goal of getting a conviction a foregone conclusion. In his opening statement he compared need to except one hundred guilty persons going free to protect one incent person from rongful conviction and aquiting me. In that statement he compared my status with one hundred guilty persons. And then in his closing statement, on the last day of trial, August 29, 2012, on lines 2 and 3 of page 47. And I quote from the transcript, "We have no reasonable doubt, uh, that, that in fact Mr. Del Duca is guilty of molestation." Put these to statements and his admission in open court that he did not want to do what was needed to assist my

defence, and in the begining of the trial say, after I told the court that I was requesting the earlier 911 tapes and the fallow up reports and records that the prosecution had not turned ouer at discovery, that "We" did not want to use the evidence. And lack of any kind of effective effort and you have a problem much grater than ineffective consel, which he was. You have an attorney, which Judge Roberts refused to remoue from the case inspite of persistant conflict, that not only seemed to be assisting the prosecution, but in fact worked with the prosecution in facilitating a conviction. But it is true that his efforts were woefully ineffective for my defence.

Additional Ground 6

State Interference with Attn.-Client Relations

In my effort to get effective assistance of counsel I have been told that the deffence attornies are only allowed to address the issues brought to bare by the prosecution, not to seek out evidence in my favor, nor to deal with civil rights violations committed against me while held to answer for crimes. This caused unsermountable strain between my self and potential counsel becaus it limitted my ability to defend myself without evidence in my favor and protection from abuse and neglect which did and still does impare my ability to defend myself from the state.

In the beginning I complained about counsel saying that I had nothing to do with my defence and that at the state level civil rights issues are not address. Well I have allways used the statement that prevention is a far better action than to wate to see if a cure is going to be needed. And I could not, but did suspect, understand why the public defenders

would not or could not assist me with the issues that I had to face, and ultimately, endure. Brian Beattie finaly stated the problem very clearly in open court on May 4, 2012. He informed the court that he was not licensed to do what was necessary for my defence. Because of this reason, state licensing restrictions, and because of my needs for my defence, and it is my defence, 6th Amend. U.S., from the start there was no chance for a workable relationship with the counsel that the state provided.

By the attorneys refusing to address the reasonable request I submitted to them, RPC 1.3 demands that they do, there is nothing left for me to do but to fight for my rights, and that fight should never be with counsel, they are supposed to assist you with protecting and assuring your rights, not to inhibit you ability to enforce the.

So, thus it is, and as the record clearly shows, the state has interfered with my chance at an attorney-client

relationship.

State v. Thomas, 71 Wn. 3d 479 471 (1967)

Counsel is ineffective if the cercom-stances are such that the likelyhood that any lawyer could provid effective assistance is so small that a presumption of prejudice is appriate without further inquiry; (ie government interference with defendant's attorney-client relationship).

Boulas v. The Supreme Court, 23 Cal. Rplr. 487 (Cal. Ct. App. 1986) (governmental interference) No showing of prejudice to the defendant in necessary under the circumstances.

All through my efforts to get counsel to assist me with my cases I have been hampered by this one problem, and it is the root of my problem. Judge Roberts put it very clearly several times, she said that I would have the same problem with all attornies in the State of Washington. That pretty much confirms the problem and my claims.

Additional Ground 7
Prosecutoral Misconduct

The prosecutors prejidice my defence in several ways, and unlawfully so, (1) the prosecution used false statements to get the warrant for arrest, the Strojans statements that they only called 911 one time, Oct 25, 2010, when in fact they had called two months earlier and the report must not have been credible or charges would have been filed earlier and based on the earlier accusation. (2) the prosecution use a charge that at the very least was not probable, and, more than likely, a false charge, (3) imbellishished the witnessics statement to try to make the evidence fit the charge and to prejudice the jury. Ms Mayamasu used statements that were not part of the testimony of Caden's and Kylie's recorded and verifiable statements. Neither child said that I tickled them, that came from John Strojan Nor did the children say that I ran my hand down their front nor did Kylie say that my touch lingered on her chest. (4) the prosecution withheld requested evidence pertaining to this case, 911 recording (s) and other related record prior to October 25, 2011. In

July, I had requested Scott Smith to request all 911 recordings and related records and report for the time period of July and September, 2010. All I heard about the request at that time is that he did not like the answer he got back. When I read the Objection to Subpoena Duces Tecum that the King County Sheriff's Office filed on August 8, 2011, I saw why he didn't like it, "The Sheriff's Offic objects to the subpoena ... because that request duplicates what was or should already have been provided in discovery." That is a quasi admition that there was more than what was turned over in discovery, but had been provided to the prosecutor. It goes to reason that the state would not withhold that information and evidence from the defence if it was harmful to the defence, so the opposite must be true.

State v. Delduca Case number: 11-1-02184-6 KNT

Do the State and Defense agree this case should be preassigned? Explain if preassignment requested.

If the parties do not reach an agreed resolution of the case, what is the estimated amount of time needed to prepare for trial?

The State confirms it has:

X Given preliminary notice of possible amendments to the information

X Provided defendant's criminal history

X Disclosed ~~and provided~~ to defense all discovery in its possession ~~or control~~, including but not limited to: all police reports, witness statements, CDs/DVDs, audio/video tapes, field test reports, lab reports, 911 tapes, jail inmate calls, medical records, and other relevant materials

_____ If victim medical records have not been received, State has contacted the assigned detective to obtain or attempt to obtain appropriate consents for records

_____ Other

_____ If any of the above has not been completed, explain and give a date for completion:

The parties have conferred and discussed:

N/A An offer to resolve the case, including the limits and duration of the offer, or the information needed in order for an offer to be made to the defense

N/A Additional discovery/information that the parties agree is needed to evaluate a potential resolution. Specifically:

_____ Other investigations or referrals concerning the defendant, and whether the defendant would like to try to resolve these charges jointly

X The defendant's offender score

X The likely progress of the case

_____ Other:

If any of the above has not been completed, explain and give a date for completion:

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY
REGIONAL JUSTICE CENTER

STATE OF WASHINGTON,	
vs.	No. 11-1-02184-6KNT
JON A. DELDUCA Respondent	OBJECTION TO SUBPOENA DUCES TECUM (CIVIL RULES 45(b)(2) and 45(c)(2)(B))

The King County Sheriff's Office objects to inspection and production of documents in response to the undated subpoena duces tecum which requests:

All and any police reports or referrals to King County Sheriff's Office concerning Jon A. Delduca between March 1, 2010 and November 1, 2010.

The Sheriff's Office objects to inspection and production of these documents pursuant to Civil Rules 45(c) as follows:

The Sheriff's Office objects to the subpoena to the extent that it covers the underlying case file in this cause number because that request duplicates what was or should already have been provided in discovery. We have no objection to searching for and providing any other documents concerning Mr. Delduca in our system and did that for the stated time period. We did not locate any other documents. Reproducing multiple copies of same documents that have already been provided or should be provided through the prosecutor's office is unduly burdensome. If there are problems with discovery production those issues should be worked through with the prosecutor's office who can then seek additional requests for discovery if need be. The Sheriff's Office Records unit produces thousands of case reports a year. Unnecessary duplication burdens the system and slows our Office's production to other requestors, including to defense counsel when they seek records outside the ordinary course of discovery.

Dated this 8th day of August, 2011.

Patty Shelledy, Legal Advisor
King County Sheriff's Office
516 Third Avenue, Room 116
Seattle, WA 98104
(206)296-5292 (Legal Unit)

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

STATE OF WASHINGTON, Plaintiff, vs. Jon Amadio Delduca Defendant.	No. 11-1-02184-6 KNT NOTICE OF APPEARANCE REQUEST FOR DISCOVERY DEMAND FOR SPEEDY TRIAL DEMAND FOR JOINDER

COMES NOW, the Associated Counsel for the Accused and hereby appears on behalf of the above named Defendant in this cause.

FURTHER, the below named attorney on behalf of the defendant hereby demands that the Prosecuting Attorney provide all material and information mandated by CrR 4.7, including, but not limited to the names, addresses, and phone numbers of all potential witnesses, together with a copy of the arresting officer's notes and all other statements and summaries of expected testimony of witnesses and furnish copies of, or access to, any physical evidence which either now or before trial, shall be within his or her knowledge, possession or ability to access, and which may be relevant to these charges.

FURTHER, the below named attorney requests the Prosecuting Attorney to furnish a Bill of Particulars, and to name the precise statute and subsection under which the Defendant is charged or liable to punishment.

FURTHER, the Defendant demands a speedy trial as prescribed by CrR 3.3 and moves for Joinder of Offenses related to those charged in this cause pursuant to CrR 4.3.

FURTHER, the Defendant demands that the State produce all expert witnesses at trial pursuant to CrR 6.13(b)(3)(iii).

Respectfully submitted on:12/1/2011 Brian Beattie

s/Brian F. Beattie WSBA # -- 35753
Attorney at Law

Associated Counsel for the Accused
110 Prefontaine Place S., Suite 200. Seattle, WA 98104
(206) 624-8105 TDD (206) 749-4054
FAX (206) 624-9339

Additional Ground 8

Procedural Error

In the preliminary hearing, the court did not have the children testify. If Caden had testified then his testimony could have been subject to cross examination. And if he wouldn't or couldn't testify then the accusation nor the charge against me should not have been admitted as evidence. As it turned out the state was allowed to play the child interview without any chance of rebuttle. It didn't matter that the jury had to find me not guilty on that charge because of no witness to confront me, the jury was still allowed to hear his testimony with no chance to challenge it, and that was very prejudicial. The sentiment that, because of the nature of the charges and the ages of the "victims", and there being two, that it was difficult to be impartial. That sentiment came from the jury pool, and only one potential jury said that she could be impartial, and she was not selected to sit on the jury panel.

And when the state showed the child interview DVD's to the jury, it

before the children were brought in to testify. There was no foundation layed to allow the prior statements in at that point. That was prejudicial for three reasons, (1) by letting the jury see and hear the DVDs without the children present when the DVDs were admitted without a challenge while the interviewees still stood (2) in Cadens case there was no posibility of cross examination or rebuttle because he did not testify at all, he just sat there looking cute and, probably promoting sympathy from the jurors not for sitting there. And that turned out to be his only purpose. Just four months earlier he had given a complete statement, but at Trial he couldn't remember nothing even after being shown portions of his prior statements. His presence was highly prejudicial, and the outcome could not have been by accident, it had to be by design. (3) the prior statements that the two children made to the investigator for A.C.A., in the presence of Ms. Mayamasu,

were not allowed in as evidence, at least the most important statements because Brian Beattie did not confront Kylie about her prior statements. Yet the state showed the jury the child DVDs without the children present In ER 613 it says;

"In the examination of a witness concerning a prior statement made by the witness, whether written or not, the court may require that the statement be shown or its contents disclosed to the witness at that time, and on request the same shall be shown or disclosed to the opposing counsel."

The court prejudiced me because, by using a a double standard for the presentment of prior statements, even when the statements are from the same witness, it allowed the state to present the witnesses prior statement. which are in favor of the states case unchalenged on presentment, you can not question a recording, and yet the court barred the prior statement, by the same witness, which were in favor of my defence, and as it turned out were the only evidence in my favor.

Additional Ground 9
Evidence Does Not Support The Charges

The accusation was, as Kylie and Caden both said in there statements that, as they said, was basicly three touching points, no rubbing, tickling, and no lingering. Just touch, touch, touch. And Kylie, when asked about the touch in the vaginal area, what I was doing with my fingers, she was confused about that question, like she didn't know what the fingers would be doing, and thats a good thing, or how she was supposed to answer the question. When Det Webber saw that she did not know how to answer the question, she asked if I was moving my finger. Kylie said no. When she ask Kylie If I was touching myself she said no. There is no evidence given to support the charge of Child Molestation in the First Degree.

RCW 9A.44.083

A person is guilty of child molestation in the first degree when the person has sexual contact with another who is less than twelve years old.

Ms. Mayamasu included the official definition for sexual conduct in the court documents. "Sexual conduct means any touching of the sexual or other ... intamate parts of a person done for the purpose of gratifying sexual desires of either party or a third party." No where in there statements are those condition discribed. From my research their discription fit one of two misdemeanors communicating with a miner for immoral perposes or indesent liberties, not M.I. of a Child.

When the state has the evidence for a possible misdemeanor and charges the person with a class A Felony and gets a conviction, then something is terribly wrong with the defence counsel system or the judicial system.

At no point, in any way do they discribe any attempt by me to stimulate them, no of me being stimulated or excited in any way.

Additional Ground 10

Sentence

Every body that I have talked to about the sentence, that was imposed on me by Judge Lori Smith have said that I was sentence to 68 months to life, and Mr. Ewers said that for me it is life in prison without. But in the sentencing papers it says "The TOTAL of all terms imposed in this cause is 68 months." In Cr R 7.2 it states that "The court shall state the precise terms of the sentence. The sentence was stated precisely as the total of "All" terms in this cause is 68 months and that is precisely the sentence that the state has to follow, 68 months minus time served and good time.

If this is not so then please let me know why. And if so let me know in a decision from your Honorabl selves, and I mean that with respect.

Dear Honored Judge,

Conclusion For Relief

With all of the issues, and every thing I put in the grounds for added relief are all part of the record either court or public, it would serve me no purpose to have false witness. Also that after the entire record is taken into consideration and not just the trial and sentencing that you will find in favor of reversal and charges responded with extreme prejudice, and that just reparations are ordered for unlawfull imprisonment and for the damages after that wrongful loss are ordered.

I have pled dearly for crimes that I did not commit and I have begged, reminded, and prayed for someone to take a closer look at what the facts were, not only about the charges but also about what has gone wrong with the whole system. All I asked was simple due process and to have my civil rights upheld. This

has not happened and the system has failed utterly. I tried to prevent the disaster so as to avoid having to cure. It is always better to prevent, if possible than to have to cure. In this case, prevention was not only possible it probably would have been simple and precise. But now, I fear, the cure will be painful and expensive.

I have always believed in the fact that the forefathers of this nation set in motion a system of government that, as far as I have been able to ascertain, should be able to keep this nation thriving indefinitely. Providing its citizens work at keeping the system working properly. That has not been the case for several decades and the cancer has set in. But it is curable without surgery, just as we get taxes & the debt is cut, not what we personally want or what public avid clichés.

In January of 1933, the public

with limited that socialism was a good system of government. But that did not work out so good for Germany nor the world. What they did not protect were the rights of all citizens and due process. And the results of that failure is part of history that I hope will never be forgotten.

In our society today, there is a great danger that this nation is facing and the way to prevent catastrophic failure in our system is to prevent it from happening. And that is by living the solid foundation that this country was built on and protect and nurture it, it is a living document.

I beg of you to see fit to give me the relief I request because of the facts of the record and because of law.

Sincerely

Jon Amelio DelDuca