

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

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

STATE OF WASHINGTON,

Plaintiff,

v.

DINO J CONSTANCE,

Defendant.

No. 07-1-00843-8

STATE'S RESPONSE TO DEFENDANT'S
CrR 7.8 MOTION

PROCEDURAL HISTORY

The defendant was convicted at trial of three counts of Solicitation to commit Murder in the First Degree and one count of Solicitation to commit Assault in the Second Degree. The defendant appealed his convictions for these crimes. His convictions were affirmed by the Court of Appeals. Motion for reconsideration was denied, and petition for review by the Supreme Court of the direct appeal is pending at this time. The defendant brought a prior CrR 7.8 motion at the trial court level. In the prior 7.8 motion, the defendant argued his defense counsel at trial, Mr. Walker, did not allow the defendant to testify at trial. This court found an evidentiary hearing was required under CrR 7.8 (c)(2) to determine whether defense counsel did in fact prevent the defendant from testifying on his own behalf at trial. At the evidentiary hearing, this court found Mr. Walker did not prevent the defendant from testifying at trial. After evidentiary hearing and findings, this court dismissed the prior CrR 7.8 motion.

1 Now the defendant has brought a new CrR 7.8 motion. In the new motion, the
2 defendant argues the State did not provide potentially exculpatory evidence prior to trial. The
3 defense also argues defense counsel, Mr. Walker, was ineffective for a variety of reasons. The
4 defendant also raises issue with how counsel on direct appeal argued the case in the Court of
5 Appeals, the defendant makes a general motion for discovery under CrR 4.7, the defendant
6 argues his right to counsel was violated, the defendant argues double Jeopardy, fail to grant
7 mistrial, error in jury instructions, and cumulative error.
8

9 10 FACTS

11 At trial, the jury heard from Jordan and Kit Spry. The Sprys are father and son who
12 testified the defendant attempted to hire them to kill the defendant's wife.

13 The jury heard from Zach Brown, who testified while in jail, the defendant attempted to
14 hire Brown to viciously assault his wife.

15 And the jury heard the testimony of Ricci Castellanos, who testified the defendant also
16 attempted to hire him to kill his wife.

17 The jury heard a recording of witness Ricci Castellanos talking to the defendant
18 regarding details of the planned crime. In the recorded conversation, the defendant explained in
19 detail how Castellanos should gain entry into the intended victim's place of work without leaving
20 fingerprint or DNA evidence. The defendant was caught on tape explaining when the crime
21 should occur and how Castellanos should avoid detection. At one point in the recorded
22 conversation, Castellanos asked the defendant "you still want her dead right?" the defendant
23 answered by saying they shouldn't discuss that over the phone.
24

25
26 The jury convicted the defendant after hearing multiple unrelated witnesses testify the
27 defendant attempted to hire them to kill his wife (and severely beat her in the case of Zach

1 Brown's testimony), along with the very damning evidence of the defendant speaking on a
2 recorded phone call with Castellanos about the details of how and when the crimes should take
3 place.

4 TRANSFER TO THE COURT OF APPEALS

5 Generally the motions the defendant makes should be brought at a personal restraint
6 petition in the court of appeals. CrR 7.8 (c) (2) states: "The court shall transfer a motion filed by
7 a defendant to the Court of Appeals for consideration as a personal restraint petition unless the
8 court determines that the motion is not barred by RCW 10.73.090 and either (i) the defendant
9 has made a substantial showing that he or she is entitled to relief or (ii) resolution of the motion
10 will require a factual hearing."
11

12 The defendant in this motion raises issues that are not proper basis for CrR 7.8 motion.
13 For example, he attempts to relitigate how his direct appeal was argued, he argues his trial
14 counsel was ineffective because of tactical decisions he made in not attempting to introduce
15 evidence which is clearly collateral, he argues the State now somehow has a CrR 4.7 discovery
16 obligation. None of these issues should be heard by this court in a CrR 7.8 motion in this case
17 which has been fully litigated at the trial court level and in the Court of Appeals.
18

19 BRADY MATERIAL

20
21 The defendant argues the State did not disclose discoverable exculpatory evidence.
22 The State does not agree with the defendant's claim. The defendant requests an evidentiary
23 hearing to determine whether discoverable exculpatory evidence was in fact not provided by the
24 State. The State agrees an evidentiary hearing is required by the trial court to make a
25 determination as to whether discoverable exculpatory evidence was not provided in this matter.
26 The State agrees this issue is properly brought as a CrR 7.8 motion as an evidentiary hearing
27 appears to be required on this issue.

1
2 DISCOVERY

3 The defendant makes a motion for discovery under CrR 4.7 as part of the CrR 7.8
4 motion. The defendant does not provide any authority by which the court should order
5 discovery on this case. The State submits as this case is long ago complete at the trial level,
6 there is no CrR 4.7 discovery obligation. The defendant continues to fail to provide authority to
7 the contrary.
8

9
10 CONCLUSION

11 The bulk of issues raised by the defendant should not be allowed as a CrR 7.8 motion.
12 CrR 7.8 (c)(2) makes it clear that absent a need for evidentiary hearing, issues as those raised
13 by the defendant here should be transferred to the Court of appeals for consideration as a
14 Personal Restraint Petition. The State agrees an evidentiary hearing is needed regarding the
15 alleged Brady violations. The State submits a hearing date should be set for these issues alone
16 and the State submits all other issues should be transferred to the Court of Appeals.
17

18 DATED this 9th day of November, 2010

19
20 Respectfully submitted,

21
22
23 Anthony F. Golik WSBA# 25172
24 Deputy Prosecuting Attorney
25
26
27