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CL17162701

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR SNOHOMISH COUNTY

STATE OF WASHINGTON,  
Plaintiff,

v.

ALAN J. SMITH,  
Defendant.

) No. 13-1-01546-8  
)  
) MOTION AND DECLARATION  
) FOR ORDER AUTHORIZING THE  
) DEFENDANT TO SEEK REVIEW  
) AT PUBLIC EXPENSE AND  
) APPOINTING AN ATTORNEY  
) ON APPEAL

A. MOTION

COMES NOW the defendant and moves the Court for an order allowing the defendant to seek review at public expense and providing for appointment of attorney on appeal. This motion is based on RAP 2.2(a)(1) and is supported by the following declaration.

DATED this 9 day of March, 2015.

CAROLINE MANN, WSBA#17790  
Attorney for Defendant

Motion and Declaration for  
Order Authorizing the Defendant to  
Seek Review at Public Expense and  
Appointing an Attorney on Appeal

Snohomish County Public Defender Association  
2722 Colby Avenue, Ste. 200  
Everett, WA 98201  
(425) 339-6300

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## B. DECLARATION

I was tried and convicted on one count of First Degree Murder with a Deadly Weapon in front of the Honorable Linda C. Krese. A judgment and sentence was entered in this matter on the 5th day of March, 2015. I desire to appeal the conviction and the judgment imposed. I believe that the appeal has merit and is not frivolous and make the following assignments of error:

- 1) The Court erred in denying the motion to suppress testimony under the priest-penitent privilege;
  - 2) The Court erred in denying the motion for a Frye hearing;
  - 3) The Court erred in not suppressing additional materials in the 3.6 hearing;
  - 4) The Court erred in not suppressing additional statements in the 3.5 hearing under both CrR 3.5 and the constitutional arguments raised;
  - 5) The Court erred in denying the motion to change venue;
  - 6) The Court erred in denying the motion for new counsel;
  - 7) The Court erred in granting continuances over Defendant's objection;
  - 8) The Court erred in denying the defense motion to dismiss pursuant to *State vs. Green*, 94 Wn.2d 216 (1980);
  - 9) The Court erred in finding there was sufficient evidence to convict;
  - 10) My attorneys provided ineffective assistance of counsel by failing to present evidence, failing to cross examine state's witnesses properly, failing to call necessary defense witnesses to establish crucial facts, failing to submit all requested materials for sentencing, and by failing to communicate with me adequately throughout the course of the case.
-

I have previously been found to be indigent. The following declaration provides information as to my current financial status:

- 1.) That I am the defendant in the above-captioned cause;
- 2.) That I do not own any real estate;
- 3.) That I do not own any stocks, bonds, or notes (if so, value is approximately \$\_\_\_\_\_);
- 4.) That I am the beneficiary of a <sup>401(k)</sup> ~~401(k)~~ account or accounts (if so, income therefrom is approximately \$0); *balance \$50,000. All discretionary funds removed. Remaining balance not accessible for at least 15 years.*
- 5.) That I own the following motor vehicles or other substantial items of personal property: N/A

ITEM	VALUE/AMOUNT OWED ON ITEM
_____	_____
_____	_____
_____	_____

- 6.) That I do not have income from interest or dividends (if so, amount is approximately \$1);
- 7.) That I have approximately \$0 in checking account(s), \$0 in savings account(s), and \$16.00 in cash.);
- 8.) That I ~~am~~/am not married (if so, my spouse's name and address is: wife deceased);

- 9.) That the following persons are dependent on me for their support: *\$1,100 - child support owed per month*

NAME	RELATIONSHIP	AGE
<u>Noelani Smith</u>	<u>Daughter</u>	<u>7</u>
<u>Felix Smith</u>	<u>Son</u>	<u>5</u>
_____	_____	_____
_____	_____	_____

- 10.) That I have the following substantial debts or expenses:

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NAME	AMOUNT OWED	MONTHLY PAYMENT
<u>Child Support</u>	<u>approx \$30,000</u>	<u>\$1,100 additional added per month.</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

11.) That I am personally receiving public assistance from the following sources (or was until I was incarcerated): N/A

AGENCY OR PROGRAM	AMOUNT OF ASSISTANCE
_____	_____
_____	_____
_____	_____

12.) That I am not employed (if so, take-home pay is approximately \$\_\_\_\_\_ per month.);

13.) That I have no substantial income other than what is set forth above;

14.) Other circumstances affecting my financial position include:

Life insurance beneficiary - funds ruled not to go to myself  
by Snohomish County Superior Court

15.) I authorize the court to obtain verification information regarding my financial status from banks, employers, or other individuals or institutions, if appropriate.

16.) That I will immediately report to the Court any change in my financial status which materially affects the Court's finding of indigence.

17.) I certify that review is being sought in good faith. I designate the following parts of the record which are necessary for review:

(X) Pre-trial hearings  
 (Motions to Continue)

Date(s): 9/12/13, 12/13/13, 3/27/14, 5/20/14

Judge(s): George Boudin, Millie Judge, Linda Krese

(X) Pre-trial hearings  
 (3.5, 5.6, Frye Hg)

Date(s): 3/28/14, April 4, 9, + 29, 2014

Judge(s): Linda C. Krese

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- (X) Pre-trial hearing  
(Priest-Penitent privilege) Date(s): April 4, 2014  
Judge(s): Linda C. Krese
- (X) Pre-trial hearings  
(Venue, Motions in Limine) Date(s): Dec 5, 2014, Jan. 7, 2015  
Judge(s): Linda C. Krese
- (X) Trial, ~~excluding~~ Date(s): Jan 12 - Feb 4, 2015  
Judge(s): Linda C. Krese
- (X) Post-trial hearings Date(s): Feb 20 & Feb 25, 2015  
Judge(s): Michael Downes & Linda Krese
- (X) Sentencing hearing(s) Date(s): March 5, 2015  
Judge(s): Linda Krese
- ( ) Other: Date(s): \_\_\_\_\_  
Judge(s): \_\_\_\_\_

18.) That the foregoing is a true and correct statement of my financial position to the best of my knowledge and belief.

For the foregoing reasons, I request the Court to authorize me to seek review at public expense, including, but not limited to, all filing fees, attorney's fees, preparation of briefs, and preparation of verbatim report of proceedings as set forth in the accompanying order of indigency, and the preparation of necessary clerk's papers.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

SIGNED in Everett, Washington this 9<sup>th</sup> day of March, 2015.

