NO. **342123**

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

JAMES FAIRE,

Appellant,

v.

STATE OF WASHINGTON,

Respondent.

BRIEF FOR DISCRETIONARY REVIEW

Stephen Pidgeon, WSBA #25265

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Party bringing this appeal:	James Faire, Defendant
Decision to be reviewed:	Findings of Facts, Conclusions of Law Denying Defendant's Writ for Habeas Corpus
Review to be taken to:	Court of Appeals, Division III
Respondent/Plaintiff:	State of Washington
Appellant/Defendant:	James Faire
Plaintiff's Counsel:	Karl Sloan, Okanogan County Prosecutor
Defendant's Counsel:	Stephen Pidgeon Attorney for Appellant/Defendant

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SUMMARY OF THE CASE

James Faire, (hereafter "Faire), during the course of an ambush being executed against him and Angela Nobilis on the afternoon of June 18, 2015, by five individuals on a 20 acre property located in Okanogan County, managed to escape the ambush by driving his vehicle away from the scene to a safe location, where he immediately called the police.

During Faire's flight to avoid the attack, one of the attackers, Debra Long, unbeknownst to Faire, was caught under the vehicle. She was run over by the truck Faire was driving and died at the scene. Another assailant, George Abrantes, having attacked Faire and Faire's truck with a length of heavy chain with a heavy padlock attached to it, was also injured during Faire's escape.

The Okanogan County Sheriff arrested Faire and Nobilis that afternoon, and charged Faire with First Degree Murder, First Degree Murder/Felony Murder, First Degree Assault, Trespass in the First Degree, and Theft in the First Degree (CP ___. Docket Entries, 12,13,14).

Within a week, Faire requested a court-appointed attorney, (CP __, Docket Entry 3) and filed an affidavit of indigency (CP ___, Docket Entry 10). The court appointed a public defender, but the public defender withdrew without notice approximately one month later (CP ___, Docket Entry 18.1).

Following the attorney's withdrawal, no other attorney was appointed to represent Faire; no attorney filed any notice of appearance on his behalf; and Faire believed that he was without counsel.

Faire nonetheless was presented in custody at hearings in September (CP ___, Docket Entry 21), October (CP ___, Docket Entry 25), November (CP ___, Docket Entry 29), and December (CP ___, Docket Entry 32), without benefit of counsel. During this period, Faire wrote two letters (CP ___, Docket Entry 22; CP ___, Docket Entry 28), to the court, both of which were considered by the court (CP ___, Docket Entry 29).

The presentation of Faire at each critical stage proceeding without benefit of counsel violates rights protected under the Sixth Amendment, and under Article 1, Section 3 of Washington's constitution.

The incarceration of Faire for 173 days without benefit of counsel, when Faire was indigent, and had previously acquired a court-appointed attorney who never brought a motion to reduce bail; and when the court could not obtain a replacement for court-appointed counsel from August 18, 2015 to January 17, 2016, is a violation due process protected by the Fourteenth Amendment and a violation of the Eighth Amendment, and Article 1, Section 14, of Washington's constitution.

ISSUES ON APPEAL

Whether the court erred in denying Faire's Writ of Habeas Corpus, when the State failed to meet its burden of proof beyond a reasonable doubt that Fiare's due process rights had not been violated;

Whether the presentation of Faire at each critical stage proceeding without benefit of counsel constitutes a violation of the Sixth Amendment;

Whether the presentation of Faire at each critical stage proceeding without benefit of counsel constitutes a violation of Article I, Section 3 of Washington's constitution;

Whether the violations of Faire's rights protected under the Sixth Amendment constitute grounds for dismissal of all charges;

Whether the violations of Faire's rights protected under Article 1, Section 3 of Washington's Constitution constitutes grounds for dismissal of all charges;

Whether the violations of Faire's rights protected under the Sixth Amendment constitute grounds for release from incarceration pursuant to a Writ of Habeas Corpus without conditions;

Whether the violations of Faire's rights protected under Article 1, Section 3 of Washington's Constitution constitutes grounds for release from incarceration pursuant to a Writ of Habeas Corpus without conditions; and

Whether incarceration for 173 days without benefit of counsel: when Faire was indigent and had previously been appointed counsel; when his court- appointed counsel never brought a motion to reduce bail; and when the court could not obtain a replacement for court-appointed counsel from August 18, 2015, to January 17, 2016, amounts to a violation of the Eighth Amendment and Article I, Section 14, of Washington's constitution.

STATEMENT OF APPLICABLE FACTS

James Faire was arrested on June 18, 2015. Faire was charged with First Degree Murder, First Degree Murder/Felony Murder, First Degree Assault, Trespass in the First Degree, and Theft in the First Degree (CP ___. Docket Entries, 12,13,14).

Within a week, Faire requested a court-appointed attorney, (CP __, Docket Entry 3) and filed an affidavit of indigency (CP ___, Docket Entry 10). The court appointed a public defender, but the public defender withdrew without notice approximately one month later (CP ___, Docket Entry 18.1).

On June 19, 2015, the court entered an Order Finding Probable Cause and Setting Conditions for Pretrial Release, which set bail at $750,000.

Following the attorney's withdrawal, no other attorney was appointed to represent Faire; no attorney filed any notice of appearance on his behalf; Faire believed that he was without counsel, and felt threatened by the attorneys who represented themselves as public defenders (CP ___, Docket Entry 22).

Faire nonetheless was presented in custody at hearings in September (CP ___, Docket Entry 21), October (CP ___, Docket Entry 25), November (CP ___, Docket Entry 29), and December (CP ___, Docket Entry 32), without benefit of counsel. During this period, Faire wrote two letters (CP ___, Docket Entry 22; CP ___, Docket Entry 28) to the court, which were considered by the court (CP ___, Docket Entry 29).

On March 7, 2016, Faire brought a motion for a writ of habeas corpus, claiming that his restraint was illegal. The court found no procedural error in the brining of the motion for the writ.

In its findings of facts and conclusions of law denying Faire's motion for a writ of habeas corpus, the court found:

"[T]hat counsel appeared with the defendant at each hearing."

"There is no evidence in the record, declarations, or an offer of proof, to show a loss of evidence based on the defendant's allegations of denial of counsel."

"There is no evidence in the record, declarations, or an offer of proof, to show a loss of defense evidence due to the actions of counsel."

The court then went on to hold that "there is no basis to support the writ of habeas corpus."

The court errs in these conclusions.

ARGUMENT

i. Habeas Corpus

RCW 7.36.010 provides that "[e]very person whose liberty is restrained may prosecute a writ of habeas corpus, in the superior court to inquire to the cause of the restraint and, if the restraint is found to be illegal, the person must be released."

Faire's restraint was made illegal upon his first presentation in court on September 14, 2015 without benefit of counsel, and that the incarceration continued in violation of the Sixth Amendment rights as made applicable to the State under the Fourteenth Amendment, and in violation of Article I, Section 3 of the Washington's Constitution. These repeated presentations in critical stage proceedings constitute reversible error for all of the counts charged against Mr. Faire, and should result in the dismissal of these charges.

ii. Following Blount's Withdrawal, Faire Was Without Counsel

RCW 4.28.210 provides the statute in regard to what constitutes an appearance, and provides in applicable part that "[a] defendant appears in an action when he or she answers, demurs, makes any application for an order therein, or gives the plaintiff **written notice** [bold added] of his or her appearance." Public Law 2011 c 336 § 102; 1893 c 127 § 16; RRS § 241. Demurrers have been abolished by statute in Washington, and an answer or application for an order is a pleading which must be filed. None of the lawyers which the State references have filed notices of appearances, nor have they filed any pleading on behalf of Mr. Faire, nor could they because of their conflict. It is noteworthy that in the court's findings of facts, the court found that "counsel appeared with the defendant at each hearing" yet the court did not find that counsel appeared *on behalf of* or *for* the defendant, just merely that counsel also happened to be in the room at the same time. Washington law, particularly in criminal matters where no intent to appear has ever been inferred, requires a writing before the court to constitute an appearance, and the entire docket which is before this court is devoid of any such writing from the departure of Nick Blount on August 18, 2015 and the appearance of Stephen Pidgeon on January 17, 2016. The State can point to no evidence of any kind that such a written record exists, and importantly, did not point to any

such written pleading when the court rendered its decision to deny the writ.

Regardless of their attempts to make representations on behalf of Mr. Faire, Mr. Faire did not consider them to be his counsel, as his letter indicates, and they did not consider themselves to be his counsel, as their continued refusal to file of Notice of Appearance over a six month period indicates.

iii. The Failure to Secure Counsel for Defendant at Critical Stage Proceedings Constitute Gross Violations of Rights Protected under the Sixth Amendment and Article I, Section 3 of Washington's Constitution.

Faire has raised the issue of constitutional protections and violations in pretrial before the trial court. However, a claim of error may be raised for the first time on appeal if it is a "manifest error affecting a constitutional right". *State v. McFarland,* 127 Wn.2d 322, 332-3, 899 P.2d 1251 (1995), *citing* RAP 2.5(a)(3); *State v. Scott,* 110 Wn.2d 682, 686-87, 757 P.2d 492 (1988); *State v. Lynn,* 67 Wn. App. 339, 342, 835 P.2d 251 (1992). Constitutional errors are treated specially under RAP 2.5(a) because they often result in serious injustice to the accused and may adversely affect public perceptions of the fairness and integrity of judicial proceedings. *McFarland,* at 333, *citing Scott,* 110 Wn.2d at 686-87.

The incarceration of Faire without benefit of counsel for 173 days is manifest constitutional error, particularly when Faire made statements against interest in letters directly to the court, which the court considered, and when Faire was presented at critical stage proceedings, where he had the opportunity to waive rights such as jury trial, confirm for trial, waive the confidentiality of the attorney-client privilege, or even plead guilty. To appear at such critical stage proceedings without counsel constitutes manifest abuse of rights protected under the Sixth Amendment and applicable State law. The facts necessary to adjudicate the error of the court are found in the record on appeal.

In *City of Tacoma v. Heater*, 67 Wn.2d 733, 735-6, 409 P.2d 867 (1966), the Court citing *Gideon v. Wainwright*, 372 U.S. 335, 9 L.Ed.2d 799, 83 Sup. Ct. 792, states that the following portion of the Sixth Amendment was incorporated into the due process clause of the Fourteenth Amendment, and is therefore binding upon the states:

> In all criminal prosecutions the accused shall enjoy the right ... to have the assistance of counsel for his defense. *Gideon v. Wainwright, op. cit.*

Where the language of the state constitution is similar to that of the federal constitution, the language of the State constitutional provision should receive the same definition and interpretation as that which has

been given to a like provision in the federal constitution by the United States Supreme Court. *State v. Schoel*, 54 Wn.2d 388, 341 P.2d 481. Consequently, the *Gideon* case, *supra*, means that every defendant has a constitutional right to counsel in all criminal prosecutions.

A defendant's right to be heard through his own counsel is unqualified. *Chandler v. Fretag*, 348 U.S. 3, 99 L.Ed. 4, 75 Sup. Ct. 1. In *Hamilton v. Alabama*, 368 U.S. 52, 7 L.Ed.2d 114, 82 Sup. Ct. 157, a new test was devised to ascertain when the right to counsel attaches. The right arises "at any critical stage in a criminal proceeding." In *White v. Maryland*, 373 U.S. 59, 10 L.Ed.2d 193, 83 Sup. Ct. 1050, the Supreme Court held that a preliminary hearing was a "critical stage" in the Maryland proceeding. The reason for the court's holding appeared to be that a defendant's plea of guilty entered in a preliminary hearing without counsel, could later in the trial on the merits be introduced in evidence against him. Thus, the court found that the preliminary hearing was a "critical stage" and required counsel to be appointed for the accused for a preliminary hearing.

This is in accord with *Haynes v. Washington*, 373 U.S. 503, 10 L.Ed.2d 513, 83 Sup. Ct. 1336, where state officers held an accused incommunicado for nineteen hours and refused to permit him to make a telephone call to his wife or lawyer until after he confessed. The Supreme

Court held that his confession was involuntary and inadmissible under the due process clause of the Fourteenth Amendment. *City of Tacoma v. Heater*, 67 Wn.2d 733, 737-8, 409 P.2d 867 (1966), *citing Haynes, supra.*

In the case *In re Pettit v. Rhay*, 62 Wn.2d 515, 383 P.2d 889, the rule of the *Hamilton* and *White* cases, *supra,* was applied in granting a writ of habeas corpus and setting aside a conviction. The Court held that a "critical stage in a criminal proceeding" arose at a preliminary hearing where the defendant was denied counsel and the evidence adduced in the preliminary hearing was used to convict him of the charge.

iv. Habeas Corpus Properly Addresses Due Process Violations

The court also stated in *In re Pettit, supra* that "[a] writ of habeas corpus is available only for the purpose of inquiring into the legality of the petitioner's restraint, and to determine whether his constitutional right to due process of law has been violated...." *In re Pettit v. Rhay,* 62 Wn.2d 515, 518, 383 P.2d 889 (1963), citing *In re Allen v. Rhay,* 52 Wn. (2d) 609, 328 P. (2d) 367, *cert. den.* 358 U.S. 900, 3 L.Ed. (2d) 150, 79 S.Ct. 227 (1958).

"One accused of a crime is guaranteed the assistance of counsel by the constitution. U.S. Const. amend. 6. Furthermore, the State must furnish counsel at no cost to the indigent when he may lose his liberty if found guilty." *State v. Johnson*, 33 Wn. App. 15, 20, 651 P. 2d 247 (1982); *citing*

Argersinger v. Hamlin, 407 U.S. 25, 32 L.Ed.2d 530, 92 S.Ct. 2006 (1972); *Gideon v. Wainwright,* 372 U.S. 335, 9 L.Ed.2d 799, 83 S.Ct. 792, 93 A.L.R.2d 733 (1963); *Morgan v. Rhay,* 78 Wn.2d 116, 470 P.2d 180 (1970).

v. The Record Shows Faire Was Without Counsel

Faire was subject to multiple critical stage proceedings, at each of which his liberty was at risk, and in each instance, he proceeded without benefit of counsel. The state claims that because a public defender was in the courtroom at the same time and made remarks concerning the disposition of Faire's case, when no such attorney had been appointed by the court, when Faire neither requested that they act, when no representation agreement was in place between Faire and any such attorney, and when the attorneys making the representations refused to enter any Notice of Appearance in the case over a six month period, one attorney even refusing to do so against the admonition of the court. As a consequence, the state has violated his rights protected under the Sixth Amendment, because his continued incarceration without counsel at critical stage proceedings is a violation of his due process rights. As a result, the court erred in concluding that "counsel appeared with the defendant at each hearing", and erred in failing to grant the writ.

In *State v. Krozel,* 24 Conn. Supp. 266, 190 A.2d 61, a judgment of guilty was set aside, on the ground that the defendant had been denied his constitutional right to assistance of counsel. Here, the state has denied Faire counsel for nearly four months, and has considered statements of Faire on December 9, 2015, delivered to the court without benefit of counsel.

In *State v. Copeland,* the court made the following statement: CrR 3.1(b)(1) says the right to counsel "shall accrue as soon as feasible after the defendant is taken into custody...." CrR 3.1(c)(1) states that "[w]hen a person is taken into custody that person shall immediately be advised of the right to [counsel]...." CrR 3.1(c)(2) states that "[a]t the earliest opportunity a person in custody who desires [counsel] shall be provided access to a telephone...." CrR 3.1(b) and (c) clearly contemplate that if [the defendant] was in custody, the right to counsel arose. CrR 3.1(a) is not contrary. Its aim is not so much to define when the right accrues but to explain that all criminal proceedings are encompassed by the rule: "The right to [counsel] shall extend to all criminal proceedings for offenses punishable by loss of liberty regardless of their denomination as felonies, misdemeanors, or otherwise." CrR 3.1(a). *See Heinemann v. Whitman County*, 105 Wash.2d 796, 718 P.2d 789 (1986) ("custody" under former JCrR 2.11(b)(1) which provided that the "right to counsel

shall accrue as soon as feasible after the defendant is taken into custody" same as for Miranda purposes). . . "Freedom of movement" is determinative of "custody" for Miranda purposes. *State v. Sargent*, 111 Wash.2d 641, 648-49, 762 P.2d 1127 (1988); *State v. Copeland*, 130 Wash.2d 244, 922 P.2d 1304, 1325-26 (1996).

vi. The State Has the Burden to Prove Beyond a Reasonable Doubt

On direct appeal, the burden is on the State to establish beyond reasonable doubt that any error of constitutional dimensions is harmless. *In re Hagler*, 97 Wn.2d 818, 825-6, 650 P.2d 1103 (1982), *citing Chapman v. California*, 386 U.S. 18, 22, 17 L.Ed.2d 705, 87 S.Ct. 824, 24 A.L.R.3d 1065 (1967); *State v. Evans*, 96 Wn.2d 1, 4, 633 P.2d 83 (1981). There is ample reason for such a standard. "In the case of a defendant being obliged to plead to a capital charge without benefit of counsel; there the court 'does not stop to inquire whether prejudice resulted.'" *Hamilton v. State of Alabama*, 82 S.Ct. 157, 159 (1961). In this case, a defendant who enjoys the presumption of innocence prior to any conviction, was held without counsel for 173 days, was exposed to several critical stage proceedings, and the court considered two of his personal statements made to the court without benefit of counsel. It is the state's burden to establish that Faire's constitutional rights were not compromised beyond a reasonable doubt. The trial court did not apply such a standard in

rendering its decision in respect of Faire's motion for a writ of habeas corpus. The trial court erred, as the State met no such burden. Further, the record is devoid of any evidence which shows that another public defender was appointed after Nick Blount withdrew on August 18, 2015. The record is devoid of any Notice of Appearance or any other pleading or writing of any form by any attorney for 173 days. The record is dispositive in its silence. Faire was without counsel for 173 days, and was subjected to multiple critical stage proceedings, all of which violate the Sixth Amendment. Because his due process rights were violated, the incarceration was no longer legal, and there was a bona fide basis for his release without condition. The facts are so egregious at this point, dismissal of the charges is required.

As the court stated in *Hagler*, *supra*: "'The administration of justice must not only be above reproach, it must also be beyond the suspicion of reproach,' *People v. Savvides*, 1 N.Y.2d 554, 556, 136 N.E.2d 853, 854, 154 N.Y.S.2d 885 (1956), 'and by the teaching of experience that mere admonitions are insufficient to prevent repetition of abuse.'" *In re Hagler*, 97 Wn.2d 818, 830, 650 P.2d 1103 (1982), *citing Mapp v. Ohio*, 367 U.S. 643, 650-653, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961).

In this instance, the State was required to prove to the trial court beyond a reasonable doubt: 1) that counsel appeared on behalf of the

defendant at each hearing; 2) no violation of due process occurred; and 3) that "there is no basis to support the writ of habeas corpus." The standard of *In re Pettit, supra* applies: "[a] writ of habeas corpus is available only for the purpose of inquiring into the legality of the petitioner's restraint, and to determine whether his constitutional right to due process of law has been violated. The burden of proof is on the State to prove beyond a reasonable doubt that Faire's due process rights were not violated.

vii. The State Erred in Placing the Burden of Proof on Defendant

It has been made obvious by the court's own order that the court erred in placing the burden of proof on the defendant, when the burden of proof was on the State, and the burden required the State to prove beyond a reasonable doubt: 1) an attorney appeared on behalf of Faire at each of the critical stage proceedings, and to prove this matter when ample opportunity was given for any such attorney to file a notice of appearance or other writing required by the statute over nearly a six month period; 2) that there was something on the record that would allow the court to conclude that there was a loss of evidence as a result of his incarceration without counsel, when in fact the State admits openly that "there is no evidence in the record, declarations, or an offer of proof"; 3) that there was something on the record that would allow the court to conclude that the defendant lost evidence as a result of his incarceration without counsel,

when in fact the State admits openly that "there is no evidence in the record, declarations, or an offer of proof"; and 4) that "there is no basis to support the writ of habeas corpus" when the State failed entirely to establish beyond a reasonable doubt that Faire's constitutional right to counsel at critical stage proceedings had not been violated when allowing Faire to appear time after time when no attorney had been appointed, or filed a writing on his behalf, or had been named as an attorney of record.

The State failed in its burden of proof, and the court failed to consider the constitutional argument of Faire. The court therefore erred in denying Faire's motion for a writ of habeas corpus.

viii. No waiver

Given this same standard on appeal, the breaches of Faire's due process rights warrant an immediate dismissal of the charges, notwithstanding any so-called waiver of constitutional rights in oral argument.

A conclusion that deemed the federal constitutional claims waived as a matter of State law does not, of course, mean that they are waived as a matter of federal law. *Taylor v. Illinois,* 484 US 400, 422 (1988). Federal courts have consistently held that the question of when and how defaults in compliance with State procedural rules can preclude consideration of a

federal question is itself a federal question. *Henry v. Mississippi,* 379 U. S. 443, 447 (1965).

It is well established that where a State court possesses the power to disregard a procedural default in exceptional cases, the State court's failure to exercise that power in a particular case does not bar review in federal court. *Williams v. Georgia,* 349 U. S. 375, 383-384 (1955); *see also Sullivan v. Little Hunting Park, Inc.,* 396 U. S. 229, 233-234 (1969); *Henry, supra,* at 449, n. 5. See Jenner, Tone, & Martin, Historical and Practice Notes following Ill. Ann. Stat., ch. 110A, ¶ 615 (1985) (citing 16 appellate cases decided between 1979 and 1981 as examples of cases invoking plain error alone); *see also, e. g., People v. Visnack,* 135 Ill. App. 3d 113, 118, 481 N. E. 2d 744, 748 (1985) (invoking substantial rights exception despite waiver).

The state's repeated violations of due process rights due to Faire under the Sixth Amendment are repetitive, and constitute such egregious error as to warrant dismissal of the charges altogether. Faire seeks such a dismissal here. In the alternative, the Writ of Habeas Corpus should be granted, the bail requirement terminated and refunded, electronic home monitoring cancelled, and the defendant should be released without condition of any sort.

ix. Other Due Process Considerations

Under the Due Process Clause of the Fourteenth Amendment, pretrial detainees may "be subjected to only those 'restrictions and privations' which 'inhere in their confinement itself or which are justified by compelling necessities of jail administration.'" *Bell v. Wolfish,* 441 US 520, 523-24 (1979), *citing Wolfish v. Levi,* 573 F. 2d 118, 124 (1978), *quoting Rhem v. Malcolm,* 507 F. 2d 333, 336 (CA2 1974).

The presumption of innocence is a doctrine that allocates the burden of proof in criminal trials; it also may serve as an admonishment to the jury to judge an accused's guilt or innocence solely on the evidence adduced at trial and not on the basis of suspicions that may arise from the fact of his arrest, indictment, or custody, or from other matters not introduced as proof at trial. *Taylor v. Kentucky,* 436 U. S. 478, 485 (1978); *see Estelle v. Williams,* 425 U. S. 501 (1976); *In re Winship,* 397 U. S. 358 (1970); 9 J. Wigmore, Evidence § 2511 (3d ed. 1940). It is "an inaccurate, shorthand description of the right of the accused to 'remain inactive and secure, until the prosecution has taken up its burden and produced evidence and effected persuasion; . . .' an 'assumption' that is indulged in the absence of contrary evidence." *Taylor v. Kentucky, supra,* at 484 n. 12. Without question, the presumption of innocence plays an important role in our criminal justice system. "The principle that there is a presumption of

innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law." *Coffin v. United States,* 156 U. S. 432, 453 (1895).

Under the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law. *Bell v. Wolfish,* 441 US 520, 536 (1979); *Ingraham v. Wright,* 430 U. S. 651, 671-672 n. 40, 674 (1977); *Kennedy v. Mendoza-Martinez,* 372 U. S. 144, 165-167, 186 (1963); *Wong Wing v. United States,* 163 U. S. 228, 237 (1896). A person lawfully committed to pretrial detention has not been adjudged guilty of any crime. He has had only a "judicial determination of probable cause as a prerequisite to [the] extended restraint of [his] liberty following arrest." *Gerstein v. Pugh, supra,* at 114; *see Virginia v. Paul,* 148 U. S. 107, 119 (1893). Under such circumstances, the Government concededly may detain him to ensure his presence at trial and may subject him to the restrictions and conditions of the detention facility so long as those conditions and restrictions do not amount to punishment, or otherwise violate the Constitution. *Bell v. Wolfish,* 441 US 520, 536-37 (1979).

Faire's incarceration following the withdrawal of his attorney in August, 2015, and his exposure to the very first critical stage proceeding

violated the Constitutional as set forth above. As a consequence, Fourteenth Amendment due process protections have been violated, and his rights protected under the Eighth Amendment have also been violated. Faire therefore seeks a dismissal here. In the alternative, the Writ of Habeas Corpus should be granted, the bail requirement terminated and refunded, electronic home monitoring cancelled, and the defendant be released without condition of any sort.

CONCLUSION

Faire has alleged a breach of constitutional rights in his motion for a writ of habeas corpus. The burden of proof rests with the State to show beyond a reasonable doubt that his constitutional rights were not violated. The State has nothing on the record of any sort to accomplish this. The trial court erred in entering its findings of facts and conclusions of law because it failed to apply the proper burden of proof, causing error.

Faire's Sixth Amendment rights, and Article 1, Section 3 rights protected under Washington's constitution have been egregiously violated, causing Faire to be presented at numerous critical stage proceedings without counsel, and considering statements from Faire made to the court without benefit of legal advice or an attorney of record.

Faires's due process rights protected under the Fourteenth Amendment have also been violated when he remained incarcerated for

173 days without counsel, although he was indigent, and the court had previously provided him with court appointed counsel. The violations of the Sixth Amendment as cited herein render his incarceration illegal, and therefore constitute a violation of the Eighth Amendment, and Article 1, Section 14 of Washington's constitution.

For these reasons, the charges against Faire should be summarily dismissed. In the alternative, the court should grant the Writ of Habeas Corpus, and remand to the trial court with instructions to refund the bail paid by defendant, terminate the electronic home monitoring, and release James Faire with no preconditions.

Signed in Everett, this 14th day of April, 2016.

_____

Stephen Pidgeon, WSBA #25265
Attorney for Appellant James Faire

Certificate of Service

The undersigned also certifies that the foregoing was served on the Prosecutor for Okanogan County by delivering to the following:

Karl Sloan
237 Fourth Avenue N.
Okanogan, WA 98840
Telephone: (509) 422-7280

By Priority Mail, postage prepaid, this 15th day of April, 2016.

STEPHEN W. PIDGEON, WSBA #25265
Attorney for Defendant