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**OKANOGAN COUNTY SUPERIOR COURT
FOR THE STATE OF WASHINGTON**

STATE OF WASHINGTON,)	Case No. 15-1-00202-1
)	
Plaintiff,)	MOTION FOR WRIT OF HABEAS CORPUS
v.)	AND WARRANT IN AID OF WRIT OF
)	HABEAS CORPUS
JAMES FAIRE,)	
)	
Defendant.)	

1.0 REMEDY BEING SOUGHT

COMES NOW JAMES FAIRE, by and through counsel of record, Stephen Pidgeon, and MOVES this court for a Writ of Habeas Corpus in the form presented herewith together with an Order Issuing the Writ of Habeas Corpus and a Warrant in Aid of Writ of Habeas Corpus.

2.0 BASIS

A. Statement of Preliminary Facts

JAMES FAIRE was arrested on June 19, 2015. He was taken into custody immediately, and remains in custody in the Okanogan County Jail.

An attorney was appointed to represent Mr. Faire on June 23, 2015. A Notice of Appearance was filed on June 24, 2015.

An affidavit of indigency was filed by James Faire on June 29, 2015.

1 On August 18, 2015, the attorney representing James Faire withdrew. Thereafter, Mr. Faire
2 was not represented by counsel, but he remained in custody.

3 Nonetheless, the Court continued with status hearings on September 14, 2015, October 12,
4 2015, November 16, 2015, December 14, 2015, and entertained a motion to continue on December
5 14, 2015, prior to Mr. Faire having new counsel provided. On November 16, 2015, the court
6 considered a letter from James Faire to the court, Mr. Faire proceeding without benefit of counsel.
7

8 **B. Points and Authorities**

9 Where a man is not a free man in the commonly accepted sense, where he is in custody, he
10 falls within the reach of habeas corpus relief. *Jones v. Cunningham*, 371 U.S. 236, 9 L.Ed.2d 285, 83
11 S.Ct. 373, 92 A.L.R.2d 675 (1963).
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13 In *City of Tacoma v. Heater*, 67 Wn.2d 733, 735-6, 409 P.2d 867 (1966), the Court citing
14 *Gideon v. Wainwright*, 372 U.S. 335, 9 L.Ed.2d 799, 83 Sup. Ct. 792, states that the following
15 portion of the Sixth Amendment was incorporated into the due process clause of the Fourteenth
16 Amendment, and is therefore binding upon the states:

17 In all criminal prosecutions the accused shall enjoy the right ... to have the assistance of
18 counsel for his defense. *Gideon v. Wainwright*, *op. cit.*
19

20 Where the language of the state constitution is similar to that of the federal constitution, the
21 language of the state constitutional provision should receive the same definition and interpretation as
22 that which has been given to a like provision in the federal constitution by the United States Supreme
23 Court. *State v. Schoel*, 54 Wn.2d 388, 341 P.2d 481. Consequently, the *Gideon* case, *supra*, means
24 that **every defendant has a constitutional right to counsel in all criminal prosecutions.**
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1 A defendant's right to be heard through his own counsel is unqualified. *Chandler v. Fretag*,
2 348 U.S. 3, 99 L.Ed. 4, 75 Sup. Ct. 1.

3 In *Hamilton v. Alabama*, 368 U.S. 52, 7 L.Ed.2d 114, 82 Sup. Ct. 157, a new test was devised
4 to ascertain when the right to counsel attaches. The right arises “**at any critical stage in a criminal**
5 **proceeding.**” In *White v. Maryland*, 373 U.S. 59, 10 L.Ed.2d 193, 83 Sup. Ct. 1050, the Supreme
6 Court held that **a preliminary hearing was a “critical stage”** in the Maryland proceeding. The
7 reason for the court's holding appeared to be that a defendant's plea of guilty entered in a preliminary
8 hearing without counsel, could later in the trial on the merits be introduced in evidence against him.
9 Thus, the court found that the preliminary hearing was a “critical stage” and required counsel to be
10 appointed for the accused for a preliminary hearing.
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13 This is in accord with *Haynes v. Washington*, 373 U.S. 503, 10 L.Ed.2d 513, 83 Sup. Ct.
14 1336, where state officers held an accused incommunicado for 19 hours and refused to permit him to
15 make a telephone call to his wife or lawyer until after he confessed. The Supreme Court held that his
16 confession was involuntary and inadmissible under the due process clause of the Fourteenth
17 Amendment. *City of Tacoma v. Heater*, 67 Wn.2d 733, 737-8, 409 P.2d 867 (1966), *citing Haynes*,
18 *supra*.
19

20 In the case *In re Pettit v. Rhay*, 62 Wn.2d 515, 383 P.2d 889, the rule of the *Hamilton* and
21 *White* cases, *supra*, was applied in granting a writ of habeas corpus and setting aside a conviction.
22 The Court held that a “critical stage in a criminal proceeding” **arose at a preliminary hearing**
23 **where the defendant was denied counsel and the evidence adduced in the preliminary hearing**
24 **was used to convict him of the charge.**
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1 In *State v. Krozel*, 24 Conn. Supp. 266, 190 A.2d 61, a judgment of guilty was set aside, on
2 the ground that the defendant had been denied his constitutional right to assistance of counsel. The
3 defendant was arrested on suspicion of driving while intoxicated. He was taken to the police barracks
4 and given sobriety tests, after which he was charged with the offense. The defendant's requests that
5 he be allowed to call his attorney and his wife were denied. This refusal was based on the policy of
6 the police department to forbid any accused suspected of intoxication to make a call or to use a
7 telephone for a 4-hour period after his arrest. Here, the state has denied Mr. Faire counsel for nearly
8 four months, and has considered statements of Mr. Faire on December 9, 2015, delivered to the court
9 without benefit of counsel.
10

11 In the case of *In re Newbern*, 175 Cal. App.2d 862, 1 Cal. Rptr. 80, 78 A.L.R.2d 901, the
12 defendant was discharged from custody where he was denied an opportunity to procure a blood test
13 on a charge of intoxication and thus was prevented from obtaining evidence necessary to his defense.
14 The court held that this was a denial of due process.
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16 In *Winston v. Commonwealth*, 188 Va. 386, 49 S.E.2d 611, where the defendant was arrested
17 and jailed for driving while intoxicated, and was not brought before the committing authority for 4
18 1/2 hours, and where the statute directed that the arresting officer produce the defendant "forthwith"
19 before a committing authority, the charge had to be dismissed, the court stating at 395:
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21 It is perfectly apparent, too, from what has been said, that as a result of his illegal detention
22 the defendant has been forever deprived of material evidence which might have supported his
23 claim that he was innocent of the charge under which he was held. According to the
24 undisputed medical testimony, after the lapse of the time during which he was held in jail, a
25 physical examination would have been useless and ineffectual.
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1 *City of Tacoma v. Heater*, 67 Wn.2d 733, 738-9, 409 P.2d 867 (1966), citing *Winston v.*
2 *Commonwealth*, *supra*.

3 Here, Mr. Faire has been completely deprived of the ability to muster any defense for more
4 than six months, and snow has fallen on the situs of the event, exculpatory evidence is eroding and
5 decaying with time as memories fade, and physical evidences dissipates with time.
6

7 It is essential to the effective preparation of his defense that the defendant be permitted to
8 communicate with his attorney immediately after he is charged, in order to secure assistance of
9 counsel in the pretrial period as required by the constitutional standards. It is a denial of the right to
10 counsel to proceed with multiple status conferences, to entertain motions and to consider statements
11 made by the defendant without benefit of counsel.
12

13 Okanogan County is in violation of RCW 9.33.020 (5) which provides:

14 No officer or person having the custody and control of the body or liberty of any person under
15 arrest, shall refuse permission to such arrested person to communicate with his friends or
16 with an attorney, nor subject any person under arrest to any form of personal violence,
17 intimidation, indignity or threats for the purpose of extorting from such person incriminating
18 statements or a confession. Any person violating the provisions of this section shall be guilty
19 of a misdemeanor. [1909 c 249 § 359....]
20

21 *City of Tacoma v. Heater*, 67 Wn.2d 733, 740, 409 P.2d 867 (1966).

22 This statute is in harmony with the “critical stage” rule laid down by the Supreme Court in
23 *Hamilton v. Alabama*, *supra*. Under the “critical stage” rule, the denial to the defendant of the
24 assistance of his attorney after the officers had conducted their tests and questioning, violated his
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1 constitutional right to have counsel and due process, and any conviction obtained thereafter is void.
2 *City of Tacoma v. Heater*, 67 Wn.2d 733, 741, 409 P.2d 867 (1966),

3 A defendant's Sixth Amendment right to counsel arises at any critical stage in a criminal
4 prosecution. *State v. Judge*, 100 Wn.2d 706, 675 P.2d 219 (1984), *citing Coleman v. Alabama*, 399
5 U.S. 1, 26 L.Ed.2d 387, 90 S.Ct. 1999 (1970); *United States v. Wade*, 388 U.S. 218, 18 L.Ed.2d
6 1149, 87 S.Ct. 1926 (1967).

7
8 The denial of counsel [directly after charging] prevented the defendant's effective preparation
9 for his defense to the charge against him. *City of Seattle v. Orwick*, 113 Wn.2d 823, 784 P.2d 161
10 (1989), *citing State v. Fitzsimmons*, 93 Wn.2d 436, 610 P.2d 893, 18 A.L.R.4th 690, *vacated*, 449
11 U.S. 977, *aff'd on remand*, 94 Wn.2d 858, 620 P.2d 999 (1980).

12
13 Mr. Faire has been denied the assistance of counsel on multiple occasions, each worthy of
14 dismissal of the charges against him, and each constituting violations of his Sixth Amendment rights
15 as made applicable to the state under the Fourteenth Amendment, and a violation of Article I,
16 Section 3 of the Washington's Constitution.

17 **3.0 EVIDENCE UPON WHICH MOVANT RELIES**

18 Petitioners rely upon the following:

- 19 1. The Declaration of Stephen Pidgeon, and the docket in this case.
- 20 2. The files and records herein.

21 **4.0 ORDER AND WRIT**

22 A WRIT OF HABEAS CORPUS [proposed] accompanies this petition.

23 An Order –To Issue Writ of Habeas Corpus and Warrant in Aid of Writ of Habeas Corpus
24 [proposed] accompanies this petition.
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1 Dated this 2nd day of February, 2016.

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Stephen Pidgeon, WSBA #25265
1523 132 Street SE, STE C-350
Everett, Washington 98208
(425)605-4774
Attorney for James Faire