

AFFIDAVIT


STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

LAWRENCE S. MATTHEW, being first duly sworn, upon oath, deposes and says:

1. I am an attorney licensed to practice in Arizona and I am employed by the Maricopa County Public Defender's Office.
2. In 2002, I was assigned the direct appeal of Daniel Hayden Willoughby, 1CA-CR 02-0092. Assisting me as *Knapp* Counsel was James Belanger. I reviewed the voluminous trial record and discussed with Mr. Belanger the issues to be raised on appeal. The finalization of issues to be raised in the brief and who would brief each issue was settled prior to December 31, 2002. I do not know exactly when, if ever, I became aware of the holding of *State v. Viramontes*, 204 Ariz. 360, 64 P.3d 188 (2003), which was decided in January of 2003. To the extent I may have become aware of the holding in 2003, I did not make any connection between the issues in *Viramontes* and any potential issues in Mr. Willoughby's appeal.
3. Consequently, it was not a conscious and/or knowing decision on my part to exclude from Mr. Willoughby's appellate brief any issues applicable to his case that arose as a result of the *Viramontes* case.

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

AFFIANT FURTHER SAYETH NAUGHT.


LAWRENCE S. MATTHEW
Affiant

SUBSCRIBED AND SWORN to before me this 30 day of August, 2005


Notary Public

My commission expires:

