

## Discussion

I argue that the district court erred in finding my conviction was counseled. I argue that the three panel appeals court of the Ninth Circuit erred in finding my appeal was counseled. If a record of conviction does not indicate representation by counsel ... or an effective waiver, the defendant enjoys a presumption that he was denied his right to counsel, and that his conviction is therefore void. See *Burgett v. Texas*, [389 U.S. 109](#), 114 (1967); *Carnley v. Cochran*, [369 U.S. 506](#), 516 (1962) (holding presumption of waiver from a silent record is impermissible).

Exhibit A: This is the District Court's docket, purposely filed out of order to support the appearance of the decision of the court as coming "before" the objection to the denial of the right of counsel on first appeal of a conviction.

Exhibit B: This is the true order of event's corrected in order and dates showing the decision of the court as coming "after" the objection to the denial of the right of counsel on first appeal of a conviction.

Thus, the actual record of the conviction shows entitlement to counsel but is silent as to waiver of representation, and is therefore presumptively void.

What is worse, far worse, is the court using it's own denial of a fundamental right, in it's next breath use that denial as an excuse to refuse to even hear an indigent's pro se motion for reconsideration. Thus, effectively leaving him with no voice at all.

US Court of Appeals for the Ninth Circuit  
Case Summary

Court of Appeals Docket #: 04-50189

Filed: 4/28/04

Nsuit: 0

USA v. Sutcliffe

Appeal from: Central District of California, Los Angeles

Lower court information:

District: 0973-2 : CR-02-00350-AHM

presiding judge: A. Howard Matz, District Judge

- 7/5/07 Filed order ( Alex KOZINSKI, ) **aplt's motion for appointment of counsel is granted.** Counsel will be appointed by separate order. The Clerk shall serve a copy of this order by fax on Sean K. Kennedy FPD who will locate appt counsel. The USDC shall provide this court with the name and address of appt counsel by fax at (415) 355-8111 within 14 days of locating counsel. [04-50189] (dv) [04-50189]
- 7/5/07 Sent document court's order of 07/05/07 via fax to **FPD** Sean K. Kennedy @ (213)894-0081. [04-50189] (dv) [04-50189]
- 7/26/07 Received copy of District Court order filed on July 11, 2007 appointing William C. Melcher, Esq., as CJA counsel of record for appellant. [04-50189] (dl) [04-50189]
- 10/11/07** FILED OPINION: AFFIRMED ( Terminated on the Merits after Oral Hearing; Affirmed; Written, Signed, Published. Monroe G. McKay, author; Alex KOZINSKI; Stephen S. TROTT. ) FILED AND ENTERED JUDGMENT. [04-50189] (dv) [04-50189]
- 10/12/07** Received Appellant Steven William Sutcliffe's objection to appointment of conflicted counsel from federal public defenders (**FPD**) office. Motion to relieve counsel for conflict and incompetence: motion to represent self under the duress: facts: declaration. **Served on 10/07/07.** (PANEL) [04-50189] [04-50189] (hc) [04-50189]
- 10/26/07 Received Appellant Steven William Sutcliffe's prose petition for reconsideration; served on 10/25/07. **Rcvd only due to FPD atty being appointed.** (FYI-PANEL-Fedex) [

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