

# CAPITAL PUNISHMENT CASE STATUS REPORT

May 3, 2016

## CAPITAL LITIGATION TEAM:

Timothy N. Lang, Division Chief  
Paul D. Weisser, Senior Counsel  
John J. Samson, Senior Counsel  
Tina E. Bushaw, Paralegal

ROBERT W. FERGUSON  
Attorney General  
State of Washington  
Corrections Division  
P.O. Box 40116  
Olympia, WA 98504-0116  
(360) 586-1445

## INTRODUCTION

The Capital Punishment Case Status Report is published monthly by the Office of the Attorney General, Corrections Division. It details the legal status of each case where an individual is currently under sentence of death. For easy reference, the names of current counsel for each case are italicized and bolded, and the latest developments on each case are also in bold print. Further information about any of these cases may be obtained by contacting Tim Lang, Corrections Division, or the members of the Capital Litigation Team as listed on the cover page of this report.

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## KEY TO COURT ABBREVIATIONS

|      |   |
|------|---|
| WSSC | Washington State Supreme Court                                      |
| EDC  | United States District Court for the Eastern District of Washington |
| WDC  | United States District Court for the Western District of Washington |
| 9CIR | United States Court of Appeals for the Ninth Circuit                |
| USSC | United States Supreme Court   |

NAME: CROSS, Dayva Michael  
D.O.B.: September 19, 1959  
Race: Caucasian

DATE OF CRIME: March 6, 1999

PLACE OF CRIME: King County

BRIEF FACTS: Dayva Michael Cross pleaded guilty to three counts of aggravated first degree murder for the stabbing deaths of his wife, Anouchka Baldwin, and two stepdaughters, Amanda Baldwin and Salome Holly. The aggravating circumstances were that there was more than one victim and the murders were part of a common scheme or plan or the result of a single act of the person. *State v. Cross*, King County Cause 99-1-02212-9.

DATE OF GUILTY PLEA: October 23, 2000

SPECIAL SENTENCING: May 7, 2001

JUDGMENT AND SENTENCE: King County Superior Court  
Cause No. 99-1-02212-9  
June 22, 2001

TRIAL JUDGE: Honorable Joan DuBuque

DEFENSE ATTYS: Mark Larranaga  
Richard Warner  
Seattle, WA

PROSECUTING ATTYS: Norm Maleng, Prosecuting Attorney  
Don Raz, Senior Deputy Prosecutor  
Tim Bradshaw, Deputy Prosecutor  
King County Courthouse  
516 Third Avenue, Suite W554  
Seattle, WA 98104-2362  
(206) 296-9000

APPELLANT'S ATTYS: (Direct Appeal, WSSC Cause #71267-1)  
Todd Maybrown  
Seattle, WA  
Kathryn Ross  
Mukilteo, WA

PETITIONER'S ATTYS: (Personal Restraint Petition, WSSC Cause #79761-7; USSC #14-7683)  
Todd Maybrown  
Seattle, WA  
JAMES LOBSENZ  
Seattle, WA 98104

(Federal Habeas Corpus, USDC WDC #C14-1092)  
**TODD MAYBROWN**  
**ALLEN HANSEN & MAYBROWN**  
**600 UNIVERSITY ST., SUITE 3020**  
**SEATTLE, WA 98101-4105**  
**(206) 447-9681**

**PETER OFFENBECHER**  
**SKELLENGER BENDER, PS**  
**1301 5TH AVE, SUITE 3401**  
**SEATTLE, WA 98101-2605**  
**(206) 623-6501**

RESPONDENT'S ATTYS: (Direct Appeal, WSSC Cause #71267-1)  
(Personal Restraint Petition, WSSC Cause #79761-7)  
Daniel T. Satterberg, Prosecuting Attorney  
Timothy Bradshaw, Deputy (Withdrew 01/24/03)  
Donald Raz, Deputy

James Whisman, Deputy  
Randi J. Austell, Deputy

(Personal Restraint Petition, USSC #14-7683)  
JAMES M. WHISMAN, SR. DEPUTY PROSECUTING ATTORNEY  
Seattle, WA 98101

(Federal Habeas Corpus, USDC WDC #C14-1092)  
**ROBERT W. FERGUSON, ATTORNEY GENERAL**  
**JOHN J. SAMSON, SENIOR COUNSEL**  
**CORRECTIONS DIVISION**  
**PO BOX 40116**  
**OLYMPIA, WA 98504-0116**  
**(360) 586-1445**

| <u>DATE</u> | <u>CAUSE</u> | <u>ACTION</u>  |
|-------------|--------------|--|
| 06/29/01    | 71267-1 WSSC | Notice of Judgment and Sentence  |
| 06/22/04    | 71267-1 WSSC | Oral argument held   |
| 03/30/06    | 71267-1 WSSC | Opinion (affirming conviction and sentence of death). Majority opinion authored by Justice Chambers. Chief Justice Alexander filed a concurring opinion. Justice Madsen, joined by Justices Charles Johnson, Sanders, and Owens, dissented. <i>State v. Cross</i> , 156 Wn.2d 580, 132 P.3d 80 (2006).   |
| 04/06/06    | 71267-1 WSSC | Cost Bill [\$128,781 to be paid to OPD, \$706.18 to King County]   |
| 11/06/06    | 06-6333 USSC | Petition for Writ of Certiorari denied. <i>Cross v. Washington</i> , 549 U.S. 1022, 127 S. Ct. 559, 166 L. Ed. 2d 415 (2006).  |
| 11/30/06    | 71267-1 WSSC | Mandate  |
| 12/19/06    | 71267-1 WSSC | Amended Mandate  |
| 01/30/07    | 99-1-02212-9 | Death Warrant (setting execution for February 27, 2007)  |
| 01/31/07    | 79761-7 WSSC | Application for Stay of Execution  |
| 02/02/07    | 79761-7 WSSC | Order Granting Stay of Execution and Appointing Counsel  |
| 09/06/07    | 79761-7 WSSC | Order (Petitioner's motion for appointment of Professors Boerner and Denno is denied. Motion for appointment of investigator Sanderson and Dr. Souter is granted. Motion to file under seal denied.)   |
| 10/24/07    | 79761-7 WSSC | Placeholder Petition   |
| 11/16/07    | 79761-7 WSSC | Order (Respondent's motion to reconsider is denied. The motion to contact jurors is granted as to both parties, subject to the requirements of RPC 3.5(c). The parties are also directed to specifically inform jurors that they may, but are not required, to speak with representatives of either or both the petitioner and the respondents, and may end the interviews at any time. The remaining motions are denied. All further proceedings related to discovery relative to alleged juror misconduct shall be heard by King County Superior Court |

Judge Joan E. DuBuque, except for any Petitioner requests for additional funding, which shall be considered by this Court)

|          |              |   |
|----------|--------------|---|
| 01/29/08 | 79761-7 WSSC | Personal Restraint Petition; Brief in Support of Personal Restraint Petition; Declarations of Maria Ferndanda Torres, Jonathan L. Grindlinger, MD, Mark Larranaga, Todd Maybrown, Jeffrey Ellis, David Boerner, Dr. Robert Thompson, James E. Lobsenz, Jeffrey Robinson, Richard Warner.  |
| 06/25/09 | 79761-7 WSSC | Oral argument held  |
| 07/08/09 | 79761-7 WSSC | Order (the Court denies relief based on the <i>Alford</i> plea issues presented. The Court's reasoning will be set forth in its opinion on the merits of the Petitioner's Personal Restraint Petition to be released in due course.)  |
| 09/26/13 | 79761-7 WSSC | Opinion (holding that a capital sentence can be predicated on an <i>Alford</i> plea, therefore that portion of the personal restraint petition is denied. The remaining issues will be disposed of by separate opinion.) Justice Pro Tem Chambers authored the opinion for the unanimous court. <i>In re Cross</i> , 178 Wn.2d 519, 309 P.3d 1186 (2013). |
| 06/26/14 | 79761-7 WSSC | Opinion denying personal restraint petition. Justice Wiggins authored the opinion for the Court. Justice Sanders dissented. <i>In re Cross</i> , 180 Wn.2d 660, 327 P.3d 660 (2014)   |
| 07/15/14 | 79761-7 WSSC | Petitioner's Motion for Reconsideration   |
| 07/15/14 | C14-1092 WDC | Ex Parte Motion to Appoint Counsel in an Anticipated Habeas Corpus Proceeding   |
| 07/22/14 | C14-1092 WDC | Order Granting Ex Parte Motion to Appoint Counsel   |
| 10/06/14 | 79761-7 WSSC | Order denying motion for reconsideration  |
| 10/07/14 | 79761-7 WSSC | Certificate of Finality   |
| 10/14/14 | C14-1092 WDC | Order Granting Stay of Execution  |
| 03/30/15 | 14-7683 USSC | Petition for Writ of Certiorari denied. <i>Cross v. Washington</i> , 135 S. Ct. 1701 (2015).  |
| 05/21/15 | 79761-7 WSSC | Order (granting Joint Motion to Unseal Records for Limited Purpose of Filing in Federal Court)  |
| 05/21/15 | 71267-1 WSSC | Order (granting Joint Motion to Unseal Records for Limited Purpose of Filing in Federal Court)  |
| 05/29/15 | C14-1092 WDC | First Amended Petition for Writ of Habeas Corpus  |
| 07/12/15 | C14-1092 WDC | Motion for Leave to Amend First Amended Petition for Writ of Habeas Corpus; Second Amended Petition for Writ of Habeas Corpus   |
| 07/13/15 | C14-1092 WDC | Order Granting Unopposed Motion for Leave to Amend First Amended Petition for Writ of Habeas Corpus   |
| 10/29/15 | C14-1092 WDC | Answer to Second Amended Habeas Corpus Petition   |
| 10/29/15 | C14-1092 WDC | Stipulated Motion for Extension of Time to File the Record  |

|                |                     |  |
|----------------|---------------------|--|
| 10/29/15       | C14-1092 WDC        | Order Granting Stipulated Motion for Extension of Time to File the Record  |
| 11/19/15       | C14-1092 WDC        | Joint Motion to Continue Deadline for Reply in Support of Petition   |
| 11/20/15       | C14-1092 WDC        | Order Granting Joint Motion to Continue Deadline for Reply in Support of Petition  |
| 11/25/15       | C14-1092 WDC        | Notice of Filing Respondent's Submission of State Court Record Pursuant to CR 104(i)(1)  |
| 11/30/15       | C14-1092 WDC        | State Court Record (filed)   |
| 01/21/16       | C14-1092 WDC        | Motion to Stay Proceedings and Declaration in Support  |
| 02/01/16       | C14-1092 WDC        | Response to Motion to Stay Proceedings and Declaration in Support  |
| 02/04/16       | C14-1092 WDC        | Reply to Motion to Stay Proceedings and Declaration in Support   |
| 02/04/16       | C14-1092 WDC        | Petitioner's Supplemental Reply to Motion for Stay of Proceedings  |
| 02/19/16       | C14-1092 WDC        | Unopposed Motion to Continue Reply Due Date  |
| 02/24/16       | C14-1092 WDC        | Order Granting in Part and Denying in Part Petitioner's Motion to Extend a Deadline (deadline for Petitioner's reply is due June 17, 2016) |
| <b>4/18/16</b> | <b>C14-1092 WDC</b> | <b>Order Denying Petitioner's Motion for Stay of Proceedings</b>   |

NAME: DAVIS, Cecil Emile  
D.O.B.: September 1, 1959  
Race: Black

DATE OF CRIME: January 25, 1997

PLACE OF CRIME: Pierce County

BRIEF FACTS: Cecil Emile Davis was convicted of one count of aggravated first degree murder for the suffocation/asphyxiation murder of 65-year-old Yoshiko Couch using a poisonous chemical ("Goof-Off"/Xylene), after burglarizing her home, robbing her, and raping her. The aggravating circumstance was that the murder was committed in the course of and or furtherance of the crimes of Burglary in the First Degree or Burglary in the Second Degree, Robbery in the First Degree or Robbery in the Second Degree, Rape in the First Degree and/or Rape in the Second Degree. *State v. Davis*, Pierce County Cause 97-1-00432-4.

DATE OF CONVICTION: February 6, 1998

SPECIAL SENTENCING: February 10-12, 1998  
May 15, 2007

JUDGMENT AND SENTENCE: Pierce County Superior Court  
Cause No. 97-1-00432-4  
February 23, 1998, May 18, 2007

TRIAL JUDGE: Honorable Frederick W. Fleming

DEFENSE ATTYS: Ronald Ness  
John L. Cross  
Port Orchard, WA

Julia Lindstrom  
Lloyd Alton, Jr.  
Tacoma, WA

PROSECUTING ATTYS: Gerald Horne, Prosecuting Attorney  
John W. Ladenburg (Former Prosecuting Attorney)  
John M. Neeb, Deputy Prosecutor (Withdrawn 01/26/00)  
John Hillman, Deputy Prosecutor (Former Deputy Prosecuting Attorney)  
Gerald T. Costello, Deputy Prosecutor  
Pierce County Prosecutor's Office  
930 Tacoma Avenue South, Room 946  
Tacoma, WA 98402-2171

APPELLANT'S ATTYS: (Direct Appeal, WSSC Cause #66537-1)  
Judith Mandel  
Port Orchard, WA

Ronald D. Ness  
Port Orchard, WA

(Direct Appeal, WSSC Cause #80209-2)  
Eric Broman (Withdrawn 1/15/09)  
Eric Nielsen  
Seattle, WA

David Koch  
Seattle, WA

PETITIONER'S ATTYS: (Personal Restraint Petition, WSSC #70834-7)

Gilbert Levy

Catherine Ann Chaney

(Personal Restraint Petition, WSSC #89590-2)

**ROGER A. HUNKO**  
**ATTORNEY AT LAW**  
**926 SIDNEY AVE**  
**PORT ORCHARD, WA 98366**  
**(360) 876-1001**

**PAULA T. OLSON**  
**LAW OFFICE OF PAULA T OLSON**  
**1008 S YAKIMA AVE STE 100**  
**TACOMA WA 98405**  
**(253) 627-1747**

RESPONDENT'S ATTYS:

(Direct Appeal, WSSC Cause #66537-1)  
(Personal Restraint Petition, WSSC #70834-7)  
Barbara Corey-Boulet, Deputy  
John Hillman, Deputy

(Direct Appeal, WSSC Cause #80209-2)  
Gerald Horne, Prosecuting Attorney  
John Martin Neeb, Deputy  
Kathleen Proctor, Deputy

(Personal Restraint Petition, WSSC #89590-2)  
**MARK E. LINDQUIST, PROSECUTING ATTORNEY**  
**KATHLEEN PROCTOR, DEPUTY**

| <u>DATE</u> | <u>CAUSE</u> | <u>ACTION</u>  |
|-------------|--------------|--|
| 09/28/00    | 66537-1-WSSC | Opinion affirming conviction and death sentence. Justice Smith authored the opinion for the Court. Justice Sanders dissented. <i>State v. Davis</i> , 141 Wn.2d 798, 10 P.3d 977 (2000)  |
| 11/04/04    | 70834-7 WSSC | Opinion granting personal restraint petition in part and remanding for a new sentencing proceeding. Justice Ireland authored the opinion for the Court. Justice Chambers filed a concurring opinion. Justice Sanders dissented. <i>In re Davis</i> , 152 Wn.2d 647, 101 P.3d 1 (2004). |
| 05/18/07    | 97-1-00432-4 | Judgment and Sentence  |
| 06/06/07    | 80209-2 WSSC | Notice of Appeal   |
| 02/10/11    | 80209-2 WSSC | Oral argument held   |
| 09/20/12    | 80209-2 WSSC | Opinion (affirming conviction and sentence of death). Majority opinion authored by Justice Alexander. Justice Fairhurst, joined by Justices Wiggins and Stephens dissented. Justice Gonzales did not participate. <i>State v. Davis</i> , 175 Wn.2d 287, 290 P.3d 43 (2012).           |
| 01/10/13    | 80209-2 WSSC | Order (motion for reconsideration denied)  |
| 10/07/13    | 12-9685 USSC | Petition for writ of certiorari denied. <i>Davis v. Washington</i> , 134 S. Ct. 62 (2013).   |
| 10/11/13    | 80209-2 WSSC | Mandate (Costs in the amount of \$61.82 shall be awarded to the Respondent, Pierce County Prosecuting Attorney's Office and \$129,243.11 shall be awarded to the Washington State Office of Public Defense, to be paid by Petitioner, Cecil Davis)                                     |
| 11/21/13    | 97-1-00432-4 | Death Warrant (setting execution for December 17, 2013)  |
| 11/25/13    | 89590-2 WSSC | Request For Appointment Of Attorneys Pursuant To RAP 16.25; Motion for Waiver of Filing Fee  |



|            |              |  |
|------------|--------------|--|
| 12/09/13   | 89590-2 WSSC | State's Response to First Motion for Stay of Execution   |
| 12/12/13   | 89590-2 WSSC | Order (Defendant's First Motion for Stay of Execution is granted)  |
| 09/25/14   | 89590-2 WSSC | Order (Defendant's motion for extension of deadlines is granted. The Petitioner's personal restraint petition and supplemental briefing shall be served and filed by not later than April 13, 2015. It is further ordered this stay of the execution will automatically terminate on April 14, 2015, if the Petitioner has not filed a personal restraint petition with this Court by April 13, 2015.) |
| 12/09/14   | 89590-2 WSSC | Petitioner's Ex Parte Motion for Investigator Funds  |
| 01/08/15   | 89590-2 WSSC | Order (denying Petitioner's Ex Parte Motion for Investigator Funds without prejudice to filing any subsequent RAP 16.27 motion establishing facts that give rise to a substantial reason to believe investigator's service will produce information that would support relief under RAP 16.4(c))   |
| 04/13/15   | 89590-2 WSSC | Personal Restraint Petition  |
| 05/14/15   | 89590-2 WSSC | Petitioner's Supplemental Brief Modifying Motion for Extension of Deadlines to Include Extension of Statutory Time Limitation  |
| 05/14/15   | 89590-2 WSSC | Amended Personal Restraint Petition  |
| 05/19/15   | 89590-2 WSSC | Order (granting Petitioner's Supplemental Brief Modifying Motion for Extension of Deadlines to Include Extension of Statutory Time Limitation and accepting Petitioner's Amended PRP)  |
| 08/12/2015 | 89590-2 WSSC | Respondent's Brief   |
| 10/12/2015 | 89590-2 WSSC | Petitioner's Reply Brief   |
| 12/03/2015 | 89590-2 WSSC | Order (State may file brief on the merits but any such brief is due not later than February 1, 2016)   |

NAME: ELMORE, Clark Richard (aka James Elmore aka James Lee Dickey)  
D.O.B.: November 17, 1951  
Race: White

DATE OF CRIME: April 17, 1995

PLACE OF CRIME: Whatcom County

BRIEF FACTS: Clark Richard Elmore pleaded guilty to one count of aggravated first degree murder of Kristy Ohnstad, the 14-year-old daughter of Elmore's live-in girlfriend. The two aggravating circumstances were (1) the murder was in the course of and in flight from Rape in the Second Degree, and (2) the murder was committed to conceal the commission and perpetrator of the crime. *State v. Elmore*, Whatcom County Cause 95-1-00310-1.

DATE OF GUILTY PLEA: July 6, 1995

SPECIAL SENTENCING: March 12, 1996

JUDGMENT AND SENTENCE: Whatcom County Superior Court  
Cause No. 95-1-00310-1  
May 3, 1996

TRIAL JUDGE: Honorable David Nichols

DEFENSE ATTYS: John Komorowski  
Douglas Hyldahl  
Bellingham, WA

PROSECUTING ATTYS: David S. McEachran, Prosecuting Attorney  
Whatcom County Prosecutor's Office  
Whatcom County Courthouse  
311 Grand Avenue  
Bellingham, WA 98225  
(360) 676-6784

APPELLANT'S ATTYS: (Direct Appeal, Washington Supreme Court #64085-8)  
Michael P. Iaria  
Seattle, WA  
Meredith Martin Rountree  
Austin, TX  
Rita Griffith  
Seattle, WA  
Charlotte Cassady (Withdrawn 03/06/98)  
Mobile, AL  
Jon Ostlund (06/17/96)  
Bellingham, WA

PETITIONER'S ATTYS: (Personal Restraint Petition, Washington Supreme Court #70233-1)  
Jeffrey E. Ellis  
Seattle, WA  
Meredith Martin Rountree  
Austin, TX

(Federal Habeas Corpus, USDC WDC #C08-0053, 9<sup>th</sup> Cir #12-99003)

**JEFFREY E. ELLIS**  
**LAW OFFICE OF ALSEPT & ELLIS**  
**621 SW MORRISON ST, SUITE 1025**  
**PORTLAND, OR 97205-3813**  
**(206) 218-7076**

**ROBERT GOMBINER**  
**LAW OFFICES OF GOMBINER**  
**119 1<sup>ST</sup> AVENUE, SUITE 500**  
**SEATTLE, WA 98104**  
**(206) 621-8777**

Steven Witchley (withdrew 8/29/12)  
Seattle, WA

RESPONDENT'S ATTYS:

(Personal Restraint Petition, Washington Supreme Court #70233-1)  
David S. McEachran, Prosecuting Attorney

(Federal Habeas Corpus, USDC WDC #C08-0053, 9<sup>th</sup> Cir #12-99003)

**ROBERT W. FERGUSON, ATTORNEY GENERAL**  
**JOHN J. SAMSON, SENIOR COUNSEL**  
**CORRECTIONS DIVISION**  
**PO BOX 40116**  
**OLYMPIA, WA 98504-0116**  
**(360) 586-1445**

Gregory J. Rosen, AAG (withdrew 6/6/13)  
Olympia, WA

| <u>DATE</u> | <u>CAUSE</u> | <u>ACTION</u>   |
|-------------|--------------|---|
| 05/13/96    | 64085-8 WSSC | Notice of Appeal  |
| 11/19/98    | 64085-8 WSSC | Oral argument held  |
| 10/07/99    | 64085-8 WSSC | Opinion affirming conviction and death sentence and granting State's motion to strike Appellant's "Social History". Justice Talmadge authored the opinion for the Court. Justice Sanders dissented. <i>State v. Elmore</i> , 139 Wn.2d 250, 985 P.2d 289 (1999)   |
| 10/02/00    | 99-9587 USSC | Petition for Writ of Certiorari denied, <i>Elmore v. Washington</i> , 531 U.S. 837, 121 S. Ct. 98, 148 L. Ed. 2d 57 (2000)  |
| 10/09/00    | 64095-8 WSSC | Mandate issued  |
| 10/10/00    | 70233-1 WSSC | Motion for Appointment of Counsel and for Stay of Execution Pursuant to Rules 16.24 and 16.25 of the Rules of Appellate Procedure   |
| 10/31/00    | 95-1-00310-1 | Death Warrant (setting execution for November 28, 2000)   |
| 11/07/00    | 70233-1 WSSC | Notation Order (motion for stay of execution is granted)  |
| 06/29/01    | 70233-1 WSSC | Petitioner's Personal Restraint Petition and Brief in Support   |
| 09/27/02    | 70233-1 WSSC | Order (trial court is directed to hold a reference hearing on the issue of whether counsel's failure to consult and call mental health experts in the penalty phase was deficient performance. The court is directed to take evidence on whether counsel's representation in this regard fell below an objective standard of reasonableness based on consideration of all circumstances, including whether any legitimate strategic or tactical reasons supported the |

decision not to consult and call such experts. The trial court at the conclusion is to enter findings of fact on the issue referred and expedite the process)

|          |                |  |
|----------|----------------|--|
| 06/05/03 | 70233-1 WSSC   | Order (Petitioner has not established facts that give rise to a substantial reason to believe that the renewed motion for appointment of attorney expert and renewed motion for funds to hire an investigator will produce information that would support relief under RAP 16.4(c). The order for the reference hearing does not require the trial court to make a legal conclusion regarding the adequacy of trial counsel's performance. The trial court is directed to find the facts regarding the performance of trial counsel, leaving for this court the determination whether trial counsel's performance was legally adequate. Therefore, no funds are authorized for attorney experts or an investigator. The request to file this order under seal is denied) |
| 01/27/05 | 70233-1 WSSC   | Trial Court Findings of Fact   |
| 11/21/07 | 70233-1 WSSC   | Opinion denying personal restraint petition. Justice Madsen authored the opinion for the Court. Justice Sanders dissented. <i>In re Elmore</i> , 162 Wn.2d 236, 172 P.3d 335 (2007)  |
| 01/14/08 | C08-0053 WDC   | Application for Writ of Habeas Corpus; Application for Appointment of Counsel; Request for Stay of Execution   |
| 01/18/08 | C08-0053 WDC   | Order Permitting Elmore to File Amended Petition; Order Granting Motion for Stay of Execution  |
| 02/22/08 | 70233-1 WSSC   | Order Denying Motion for Reconsideration   |
| 03/05/08 | 70233-1 WSSC   | Ruling on Cost Bill (\$245,662.53 to be paid to OPD, \$496.00 to Whatcom County); Certificate of Finality)   |
| 04/22/08 | C08-0053 WDC   | First Amended Petition for Writ of Habeas Corpus   |
| 11/02/11 | C08-0053 WDC   | Order (denying Petitioner's motion for evidentiary hearing)  |
| 06/21/12 | C08-0053 WDC   | Order Denying Petition for Habeas Corpus; Judgment in a Civil Case (certificate of appealability denied)   |
| 06/28/12 | C08-0053 WDC   | Order Granting Respondent's Motion to Amend the Court's January 18, 2008, Order Staying Elmore's Execution   |
| 08/03/12 | C08-0053 WDC   | Order Denying Reconsideration  |
| 08/10/12 | C08-0053 WDC   | Petitioner's Notice of Appeal  |
| 05/14/13 | 12-99003 9 CIR | Order (granting certificate of appealability on four claims and setting briefing schedule)   |
| 09/03/13 | 12-99003 9 CIR | Appellant's Opening Brief  |
| 10/21/13 | 12-99003 9 CIR | Appellant's Opening Brief (Corrected)  |
| 01/14/14 | 12-99003 9 CIR | Brief of Respondent-Appellee   |
| 03/10/14 | 12-99003 9 CIR | Appellant's Reply Brief  |

|                 |                     |  |
|-----------------|---------------------|--|
| 07/22/14        | 12-99003 9 CIR      | Order (Respondent shall file a supplemental brief addressing the two uncertified issues raised in the opening brief by August 28, 2014)  |
| 08/21/14        | 12-99003 9 CIR      | Appellee's Supplemental Brief Re Uncertified Issues  |
| 09/09/14        | 12-99003 9 CIR      | Appellant's Reply Brief (re: uncertified issues)   |
| 09/09/14        | 12-99003 9 CIR      | Oral argument held   |
| 04/01/15        | 12-99003 9 CIR      | Opinion affirming the decision of the district court. Judge Milan D. Smith authored the opinion of the court, with Judge Clifton concurring. Judge Hurwitz filed a separate opinion concurring in part and concurring in the result. <i>Elmore v. Sinclair</i> , 781 F.3d 1160 (9 <sup>th</sup> Cir. 2015) |
| 04/03/15        | 12-99003 9 CIR      | Unopposed Motion for Extension of Time to File Petition for Rehearing or Petition for Rehearing with Suggestion for Rehearing En Banc  |
| 05/15/15        | 12-99003 9 CIR      | Petition for Panel Rehearing and Petition for Rehearing En Banc  |
| 07/01/15        | 12-99003 9 CIR      | Appellee's Response to Petition for Panel Rehearing and Petition for Rehearing En Banc   |
| 09/03/15        | 12-99003 9 CIR      | Order and Amended Opinion (amending the Opinion and concurring Opinion filed on April 1, 2015, and denying Elmore's petition for rehearing and rehearing en banc). <i>Elmore v. Sinclair</i> , 799 F.3d 1238 (9 <sup>th</sup> Cir. 2015)   |
| 09/04/15        | 12-99003 9 CIR      | Appellant's Unopposed Motion to Stay the Mandate   |
| 09/04/15        | 12-99003 9 CIR      | Order (granting Appellant's motion to stay the mandate pending his petition for writ of certiorari)  |
| 11/19/15        | 15-A550 USSC        | Application to extend time to file petition for writ of certiorari from December 2, 2015 to January 16, 2016   |
| 11/24/15        | 15-A550 USSC        | Application Granted (deadline is January 19, 2016)   |
| 01/19/16        | 15-7848 USSC        | Petition for a Writ of Certiorari and Motion to Leave to Proceed in Forma Pauperis   |
| 02/03/16        | 15-7848 USSC        | Petitioner's Supplemental Brief  |
| 02/26/16        | 15-7848 USSC        | Respondent's Response to Petition for a Writ of Certiorari   |
| 03/08/16        | 15-7848 USSC        | Petitioner's Reply   |
| 03/24/16        | 15-7848 USSC        | Record Requested   |
| 03/24/16        | 15-7848 USSC        | Record received from U.S.C.A. 9th Circuit  |
| 03/25/16        | 15-7848 USSC        | Record received from U.S.D.C. Western District of WA   |
| 03/31/16        | 15-7848 USSC        | Record received from WA State Courts   |
| <b>04/07/16</b> | <b>15-7848 USSC</b> | <b>Distributed for conference of April 22, 2016</b>  |
| <b>04/13/16</b> | <b>15-7848 USSC</b> | <b>Conference rescheduled</b>  |

04/25/16 15-7848 USSC Distributed for conference of April 29, 2016

04/25/16 15-7848 USSC Conference rescheduled

NAME: GENTRY, Jonathan Lee  
D.O.B.: August 7, 1956  
Race: Black

DATE OF CRIME: June 13, 1988  
PLACE OF CRIME: Kitsap County

BRIEF FACTS: Jonathan Gentry was convicted of the aggravated first degree murder of Cassie Holden. The aggravating circumstance was that the murder was committed to protect or conceal the identity of the person committing the crime. *State v. Gentry*, Kitsap County Superior Court Cause No. 88-1-00395-3.

DATE OF CONVICTION: June 26, 1991

SPECIAL SENTENCING: July 2, 1991

JUDGMENT AND SENTENCE: Kitsap County Superior Court  
Cause No. 88-1-00395-3  
July 22, 1991

TRIAL JUDGE: Honorable Terence Hanley

DEFENSE ATTYS: Frederick D. Leatherman, Jr.  
Jeffery P. Robinson

PROSECUTING ATTYS: Russell Hauge, Prosecuting Attorney  
C. Danny Clem (former Prosecuting Attorney)  
Irene K. Asai, Deputy Prosecuting Attorney  
Brian T. Moran, Deputy Prosecuting Attorney

APPELLANT'S ATTYS: (Direct Appeal, Washington Supreme Court #58415-0)  
Michael P. Iaria  
Seattle, WA  
Frederick D. Leatherman, Jr.  
Seattle, WA

PETITIONER'S ATTYS: (Personal Restraint Petition, Washington Supreme Court #62677-4; #92315-9)  
(Federal Habeas Corpus, USDC WDC #C99-0289L, 9<sup>th</sup> Cir # 09-99021, USSC #12-10321)  
**RITA J. GRIFFITH** **TIMOTHY FORD**  
**GRIFFITH & COLE** **MACDONALD HOAGUE & BAYLESS**  
**1305 NE 45<sup>TH</sup> STREET, SUITE 205** **705 SECOND AVE, SUITE 1500**  
**SEATTLE, WA 98105** **SEATTLE, WA 98104-1745**  
**(206) 547-1742** **(206) 622-1604**

Brian Tsuchida (withdrew on 5/13/08) Meredith Rountree (withdrew on 5/1/09)  
Seattle, WA Austin, TX

Scott Engelhard (withdrew on 5/1/09)  
Seattle, WA

RESPONDENT'S ATTYS: (Personal Restraint Petition, Washington Supreme Court #62677-4; #92315-9)  
Russell Hauge, Prosecuting Attorney  
Randy Sutton, Deputy  
Pamela B. Loginsky, Special Deputy  
Washington Association Of Prosecuting Attorneys

RESPONDENT'S ATTYS:

(Federal Habeas Corpus, USDC WDC #C99-0289L, 9<sup>th</sup> Cir # 09-99021, USSC #12-10321)  
**ROBERT W. FERGUSON, ATTORNEY GENERAL**  
**PAUL D. WEISSER, SENIOR COUNSEL**  
**GREGORY J. ROSEN, ASSISTANT ATTORNEY GENERAL**  
**CORRECTIONS DIVISION**  
**P.O. BOX 40116**  
**OLYMPIA, WA 98504-0116**  
**(360) 586-1445**

| <u>DATE</u> | <u>CAUSE</u> | <u>ACTION</u>  |
|-------------|--------------|--|
| 08/08/91    | 58415-0 WSSC | <i>State v. Gentry</i> ; Notice of Appeal  |
| 11/09/93    | 58415-0 WSSC | Oral argument held   |
| 01/06/95    | 58415-0 WSSC | Opinion (affirming conviction and sentence of death). Majority opinion authored by Justice Andersen. Justices Utter, Johnson and Madsen dissented. <i>State v. Gentry</i> , 125 Wn.2d 570, 888 P.2d 1105 (1995)            |
| 10/02/95    | 94-9582 USSC | Petition for Writ of Certiorari denied. <i>Gentry v. Washington</i> , 516 U.S. 843, 116 S. Ct. 131, 133 L. Ed. 2d 79 (1995)  |
| 10/05/95    | 58415-0 WSSC | Mandate issued   |
| 11/02/95    | 88-1-00395-3 | Death Warrant (setting execution for December 5, 1995)   |
| 11/14/95    | 58415-0 WSSC | Order staying execution  |
| 12/15/95    | 62677-4 WSSC | Order appointing counsel   |
| 02/18/99    | 62677-4 WSSC | Opinion denying personal restraint petition. Justice Talmadge authored the opinion for the Court. Justice Sanders, joined by Justice Johnson, dissented in part. <i>In re Gentry</i> , 137 Wn.2d 378, 972 P.2d 1250 (1999) |
| 06/30/99    | 62677-4 WSSC | Order (Petitioner's motion for reconsideration is denied); Order Changing Opinion; Order (Respondent's motion, to dissolve the stay of execution upon issuance of the certificate of finality, is granted)                 |
| 07/19/99    | C99-0289 WDC | Order (staying execution of Jonathan Lee Gentry)   |
| 07/21/99    | 62677-4 WSSC | Certificate of Finality  |
| 07/26/99    | 62677-4 WSSC | Order (awarding costs in the total amount of \$178,869.57)   |
| 10/22/99    | C99-0289 WDC | Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254  |
| 01/24/00    | C99-0289 WDC | Respondent's Answer and Memorandum of Authorities  |
| 01/24/00    | C99-0289 WDC | First Amended Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. §2254   |
| 03/09/06    | C99-0289 WDC | Evidentiary hearing held   |
| 09/04/08    | C99-0289 WDC | Order on Petition for Habeas Relief Based on <i>Brady</i> and <i>Napue</i> Violations (denying habeas relief).   |



|          |                |   |
|----------|----------------|---|
| 09/05/08 | C99-0289 WDC   | Order on <i>Brady/Napue</i> Claims Regarding Leonard Smith (denying habeas relief); Order Denying Petitioner's Motion for Evidentiary Hearing on Denial of Effective Assistance of Counsel Due to Failure to Investigate  |
| 09/15/08 | C99-0289 WDC   | Order Granting Respondent's Motion for Summary Judgment, Denying Petitioner's Cross-Motion for Summary Judgment, and Order Denying Amended Habeas Petition. <i>Gentry v. Sinclair</i> , 576 F. Supp. 2d 1130 (2008).  |
| 03/23/09 | C99-0289 WDC   | Order Denying Motion for Reconsideration. <i>Gentry v. Sinclair</i> , 609 F. Supp. 2d 1179 (2009).  |
| 04/23/09 | C99-0289 WDC   | Judgment in a Civil Case  |
| 04/24/09 | C99-0289 WDC   | Order Denying Motion to Supplement Motions for Reconsideration; Amended Judgment in a Civil Case  |
| 05/22/09 | C99-0289 WDC   | Order Denying Motion for New Trial or to Amend Judgment   |
| 05/26/09 | C99-0289 WDC   | Notice of Appeal  |
| 10/02/09 | C99-0289 WDC   | Order Granting Certificate of Appealability   |
| 12/30/10 | 84039-3 WSSC   | Opinion denying second personal restraint petition [challenge to conditions of confinement]. Chief Justice Madsen authored the opinion for the Court. Justice Stephens, joined by Justice Sanders, dissented. <i>In re Gentry</i> , 170 Wn.2d 711, 245 P.3d 766 (2010). |
| 02/01/11 | 88-1-00395-3   | Motion for Post-Conviction DNA Testing; Motion for Appointment of Counsel   |
| 03/03/11 | 84039-3 WSSC   | Order (Motion for Reconsideration is denied)  |
| 03/04/11 | 84039-3 WSSC   | Certificate of Finality   |
| 04/06/11 | 88-1-00395-3   | Response to Motion for Post-Conviction DNA Testing  |
| 05/31/11 | 10-10814 USSC  | Petition for Writ of Certiorari [re: second PRP]  |
| 07/25/11 | 88-1-00395-3   | Order Granting Post-Conviction DNA Testing  |
| 10/10/11 | 86585-0 WSSC   | Personal Restraint Petition [Third]   |
| 10/17/11 | 10-10814 USSC  | Petition for writ of certiorari denied [re 84039-3]. <i>Gentry v. Sinclair</i> , 132 S. Ct. 453 (2011).   |
| 08/28/12 | 09-99021 9 CIR | Opinion affirming the judgment of the district court. Judge Clifton authored the opinion, with Judges Fisher and Paez concurring. <i>Gentry v. Sinclair</i> , 693 F.3d 867 (9th Cir. 2012).   |
| 01/15/13 | 09-99021 9 CIR | Order and Amended Opinion (amending the Court's opinion affirming the district court's judgment and denying Gentry's petition for rehearing and rehearing en banc). <i>Gentry v. Sinclair</i> , 705 F.3d 884 (9th Cir. 2013)  |
| 05/15/13 | 12-10321 USSC  | Petition for Writ of Certiorari [re <i>Gentry v. Sinclair</i> ]   |
| 09/20/13 | 88-1-00395-3   | Ruling on Motion to Deny Further Post Conviction DNA Testing (granting State's motion)  |
| 10/07/13 | 12-10321 USSC  | Petition for writ of certiorari denied. <i>Gentry v. Sinclair</i> , 134 S. Ct. 102 (2013).  |
| 10/07/13 | C99-0289 WDC   | Respondent's Motion to Vacate Stay of Execution   |

|          |                              |  |
|----------|------------------------------|--|
| 10/09/13 | 09-99021 9 CIR               | Mandate  |
| 10/28/13 | 88-1-00395-3                 | Order Denying Motion to Reconsider Defendant's Motion for Recusal; Order Denying Further Post-Conviction DNA Testing   |
| 11/21/13 | 88-1-00395-3<br>89620-8 WSSC | Notice of Discretionary Review   |
| 12/02/13 | 12-10321 USSC                | Petition for rehearing denied. <i>Gentry v. Sinclair</i> , 134 S. Ct. 726 (2013).  |
| 12/02/13 | 86585-0 WSSC                 | Motion for a Stay of Execution of Death Sentence   |
| 12/16/13 | 86585-0 WSSC                 | Order (Appellant's Motion for a Stay of Execution of Death Sentence is granted, and execution of the death sentence is stayed pending resolution of the personal restraint petition in this Court; Appellant's Motion for Leave to File Pleadings from <i>Gentry v. Sinclair</i> , U.S. Supreme Court. No. 12-10321 is denied) |
| 01/23/14 | 86585-0 WSSC                 | Opinion denying third personal restraint petition and granting State's motion to strike appendix to Petitioner's brief in response to briefs of amici. Justice Stephens authored the opinion for the Court. Justice Wiggins dissented. <i>In re Gentry</i> , 316 P.3d 1020 (2014).   |
| 01/28/14 | 09-99021 9 CIR               | Motion to Recall Mandate   |
| 02/05/14 | C99-0289 WDC                 | Order Granting Motion to Vacate Stay of Execution  |
| 02/12/14 | 86585-0 WSSC                 | Petitioner-Appellant's Motion to Supplement Record; Petitioner-Appellant's Motion for Reconsideration  |
| 02/12/14 | 09-99021 9 CIR               | Order (motion to recall mandate denied)  |
| 03/27/14 | 86585-0 WSSC                 | State's Response to Motion for Reconsideration   |
| 04/14/14 | 89620-8 WSSC                 | Appellant's Brief  |
| 05/05/14 | 86585-0 WSSC                 | Order Changing Opinion. <i>In re Gentry</i> , 179 Wn.2d 614, 316 P.3d 1020 (2014) (amended opinion)  |
| 05/07/14 | 86585-0 WSSC                 | Order Denying Further Reconsideration and Denying Motion to Supplement the Record  |
| 05/30/14 | 86585-0 WSSC                 | Certificate of Finality  |
| 06/06/14 | 86585-0 WSSC                 | Order (denying motion to continue stay of execution pending ruling on stay in related case)  |
| 06/06/14 | 89620-8 WSSC                 | Order (granting motion for stay of execution)  |
| 06/17/14 | 89620-8 WSSC                 | Respondent's Brief; Supplemental Designation of Clerk's Papers   |
| 07/14/14 | 86585-0 WSSC                 | Ruling on Cost Bill (Costs in the amount of \$29,088.84 shall be awarded to the Washington State Office of Public Defense, and costs in the amount of \$408.00 shall be awarded to Respondent, Kitsap County Prosecuting Attorney's Office, to be paid by Petitioner, Jonathan Lee Gentry.)                                    |
| 07/25/14 | 89620-8 WSSC                 | Appellant's Reply Brief  |
| 09/18/14 | 86585-0 WSSC                 | Supplemental Judgment (re: ruling on costs)  |

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| 11/05/14 | 89620-8 WSSC | Order (Court will retain case for hearing and decision. Justice Gordon McCloud recused; Justice Stephens sat for Justice McCloud)   |
| 02/02/15 | 89620-8 WSSC | Order (appointing Honorable Brad Maxa and Honorable Jill Johanson)  |
| 03/10/15 | 89620-8 WSSC | Oral argument   |
| 08/20/15 | 89620-8 WSSC | Opinion affirming the trial court's denial of further DNA testing. Justice Stephens authored the unanimous opinion for the Court. Justices McCloud and Gonzalez are recused. <i>State v. Gentry</i> , 183 Wn.2d 749, 356 P.3d 714 (2015)  |
| 08/27/15 | 89620-8 WSSC | Cost Bill   |
| 09/08/15 | 89620-8 WSSC | Motion for Stay; Motion for Reconsideration   |
| 09/30/15 | 92315-9 WSSC | Personal Restraint Petition (Fourth); Motion to Waive Filing Fee  |
| 10/01/15 | 92315-9 WSSC | Ruling on Motions (payment for filing fee waived)   |
| 10/02/15 | 92315-9 WSSC | Order (granting Motion for Stay, and the execution of the death sentence is stayed pending resolution of the Personal Restraint Petition in this Court)   |
| 10/02/15 | 89620-8 WSSC | Order (denying Motion to Extend Stay)   |
| 10/02/15 | 92315-9 WSSC | Court Letter (authoring filing of petition without prepayment of filing fee; assigning Supreme Court Cause No. 92315-9; Respondent's response to Personal Restraint Petition and answering brief, if any, due February 1, 2016; Petitioner's reply due 60 days from date of receipt of Respondent's response and answering brief) |
| 10/02/15 | 92315-9 WSSC | Order (Honorable Brad Maxa and Honorable Hill Johnason are appointed as Supreme Court Justices Pro Tem on a limited bases for this case for the consideration of the Motion for Stay)   |
| 10/19/15 | 89620-8 WSSC | Order Changing Opinion  |
| 10/21/15 | 89620-8 WSSC | Order on Motions (denying further consideration)  |
| 11/10/15 | 89620-8 WSSC | Mandate; Ruling on Cost Bill  |
| 12/15/15 | 89620-8 WSSC | Supplement Judgment (costs of \$95.71 are taxed in favor of Respondent Kitsap County Prosecuting Attorney's Office; costs of \$6,025.88 are taxed in favor of Washington State Office of Public Defense, and against Appellant Jonathan Gentry pursuant to Clerk's Ruling on Costs)   |
| 02/03/16 | 92315-9 WSSC | State's Motion for Extension to File its Response   |
| 02/09/16 | 92315-9 WSSC | Order on Motions (granting State's Motion for Extension of Time to File Response. Due March 16, 2016)   |
| 02/24/16 | 89620-8 WSSC | Notice from Respondent that the Exhibits in Case number 58415-0 were received by this court.  |
| 03/16/16 | 92315-9 WSSC | Answer to Personal Restraint Petition Due   |
| 03/16/16 | 92315-9 WSSC | State's Motion for Stay   |

|          |              |   |
|----------|--------------|---|
| 03/25/16 | 92315-9 WSSC | Order on Motions (granting State's Motion for Stay pending WSSC 88086-7 decision) |
| 07/29/16 | 92315-9 WSSC | <b>Reply to Response Due</b>  |

NAME: GREGORY, Allen Eugene  
D.O.B.: June 9, 1972  
Race: Black

DATE OF CRIME: July 27, 1996

PLACE OF CRIME: Pierce County

BRIEF FACTS: Allen Eugene Gregory was convicted on retrial of one count of aggravated first degree murder for the stabbing death of his neighbor, Geneine Harshfield. The aggravating circumstances were that the murder was committed: (1) in the course of or furtherance of Robbery in the First Degree, and (2) in the course of or furtherance of Rape in the First or Second Degree. *State v. Gregory*, Pierce County Cause No. 98-1-04967-9.

DATE OF CONVICTION: May 15, 2012

SPECIAL SENTENCING: June 13, 2012

JUDGMENT AND SENTENCE: Pierce County Superior Court  
Cause No. 98-1-04967-9

TRIAL JUDGE: Honorable Rosanne Buckner

DEFENSE ATTYS: Zenon Olbertz  
Brett A. Purtzer  
Attorneys At Law  
1008 Yakima Avenue, Ste 302  
Tacoma, WA 98405-4850  
(253) 272-9967

PROSECUTING ATTYS: Mark Lindquist, Prosecuting Attorney  
John Neeb, Deputy Prosecuting Attorney  
Pierce County Prosecutor's Office  
County-City Building  
930 Tacoma Avenue South, Room 946  
Tacoma, WA 98402-2102  
(253) 798-7400

APPELLANT'S ATTYS: (WSSC No. 88086-7)

**NEIL M. FOX**  
**LAW OFFICE OF FOX, PLLC**  
**2125 WESTERN AVE STE 330**  
**SEATTLE, WA 98121-2140**  
**(206) 728-5440**

**LILA J. SILVERSTEIN**  
**WASHINGTON APPELLATE PROJECT**  
**1511 3RD AVE STE 701**  
**SEATTLE, WA 98101-3647**  
**(206) 587-2711**

RESPONDENT'S ATTYS: (Direct Appeal, WSSC No. 88086-7)  
**JOHN MARTIN NEEB, PROSECUTING ATTORNEY**  
**KATHLEEN PROCTOR, DEPUTY PROSECUTOR**  
**930 TACOMA AVE S, RM 946**  
**TACOMA, WA 98402-2171**  
**(253) 798-7400**

| <u>DATE</u> | <u>CAUSE</u> | <u>ACTION</u>  |
|-------------|--------------|--|
| 11/30/06    | 71155-1 WSSC | Opinion reversing conviction for the rape of R.S., affirming the aggravated first degree murder conviction for the murder of G.H., reversing the death sentence, and remanding for resentencing in the murder case. Justice Bridge authored the opinion for the Court. Justice Sanders filed a dissenting opinion. <i>State v. Gregory</i> , 158 Wn.2d 759, 147 P.3d 1201 (2006) |
| 06/13/12    | 98-1-04967-9 | Judgment and Sentence  |
| 11/09/12    | 98-1-04967-9 | Notice of Appeal   |
| 11/09/12    | 88086-7 WSSC | Agreed Order RE: Indigency; Order After Evidentiary Hearing on Claim of Juror Misconduct; Judgment and Sentence/Warrant of Commitment; Notice of Judgment and Sentence Imposing Death Penalty  |
| 01/04/13    | 88086-7 WSSC | Order (Neil Fox and Lila Silverstein are appointed as counsel for Gregory.)  |
| 09/16/13    | 88086-7 WSSC | Ruling on Motions (the motion to release sealed transcripts is granted, and copies of the two sealed transcripts (from February 13, 2009 and February 20, 2009) shall be released to counsel for Mr. Gregory, but shall otherwise remain sealed as to the State and anyone else.)  |
| 01/09/14    | 88086-7 WSSC | Order (Motion to Complete the Process of Compiling a Full Set of Aggravated Murder Reports is denied)  |
| 03/10/14    | 88086-7 WSSC | Opening Brief of Appellant; Motion to Transfer Selected Transcripts from Earlier Appeal (#71155-1) to this Case  |
| 07/10/14    | 88086-7 WSSC | Order (motion to transfer selected transcripts from earlier appeal to this case and the motion to make one page from transcript of dismissed rape case part of record in this case are granted)  |
| 08/14/14    | 88086-7 WSSC | Order (statement in compliance with RCW 10.95.150)   |
| 01/08/15    | 88086-7 WSSC | Order (granting appellant's Motion for Permission to File Updated Report on Race and the Death Penalty in Washington; denying State's Motion to Strike Improper Appendices to Appellant's Brief)   |
| 04/20/15    | 88086-7 WCCS | Brief of Respondent  |
| 06/30/15    | 88086-7 WSSC | Appellant's Reply Brief  |
| 12/22/15    | 88086-7 WSSC | Order on Motions (granting motion of Fred T. Korematsu Center for Law and Equality for Permission to File Amicus Curiae Brief in Support of Appellant)   |
| 12/22/15    | 88086-7 WSSC | Brief of Amicus Curiae Fred T. Korematsu Center for Law and Equality in Support of Appellant   |
| 01/08/16    | 88086-7 WSSC | Order (granting Motion for Permission to File Amicus Curiae Brief on Behalf of Washington Coalition to Abolish the Death Penalty)  |
| 01/08/16    | 88086-7 WSSC | Brief of Amicus Curiae, Washington Coalition to Abolish the Death Penalty  |
| 01/13/16    | 88086-7 WSSC | Order (granting Motion of 56 Former And Retired Washington State Judges For Leave To File Amicus Brief And Motion To File Overlength Brief)  |

| <u>DATE</u>     | <u>CAUSE</u>        | <u>ACTION</u>  |
|-----------------|---------------------|--|
| 01/13/16        | 88086-7 WSSC        | Brief of Amicus Curiae, 56 Former and Retired WA State Judges, a Former U.S. Attorney, ACLU, ACLU - Washington, Church Council of Greater Seattle, Catholic Mobilizing Network, Faith Action Network, Friends Committee on WA Public Policy, League of Women Voters of WA, Murder Victims Families for Reconciliation, Two Law School Professors, WA Association of Criminal Defense Lawyers, and WA Defenders Association |
| 01/19/16        | 88086-7 WSSC        | Letter (clarification and adjustments to counsel for Appellant's oral argument schedule)   |
| 01/19/16        | 88086-7 WSSC        | Fifth Statement of Additional Authorities  |
| 02/16/16        | 88086-7 WSSC        | Notice of Intent to Withdraw of David Keenan   |
| 02/23/16        | 88086-7 WSSC        | Appellant's Seventh Statement of Additional Authorities  |
| 02/24/16        | 88086-7 WSSC        | Respondent's Statement of Additional Authorities   |
| 02/25/16        | 88086-7 WSSC        | Appellant's Disk with Trial Report Numbers 313-348   |
| 02/25/16        | 88086-7 WSSC        | Oral Argument  |
| 03/16/16        | 88086-7 WSSC        | Other Order (granting a hearing before WSSC Commissioner Pierce and directing each party to file a memorandum of no more than 25 pages no later than 30 days from the date of this order.)   |
| <b>04/15/16</b> | <b>88086-7 WSSC</b> | <b>State's Response to March 16, 2016 Court Order re: Special Proceeding</b>   |
| <b>04/15/16</b> | <b>88086-7 WSSC</b> | <b>Appellant's Memorandum regarding March 16, 2016 Court Order re: Special Proceeding</b>  |

NAME: SCHERF, Byron Eugene  
D.O.B.: August 3, 1958  
Race: Caucasian

DATE OF CRIME: January 29, 2011

PLACE OF CRIME: Snohomish County

BRIEF FACTS: Byron Scherf was convicted of one count of aggravated first degree murder in the death of Correctional Officer Jayme Biendl. The aggravating circumstances were (1) the victim was a corrections officer who was performing her official duties at the time of the act resulting in death and the victim was known by the defendant to be such at the time of the killing, and (2) at the time of the act resulting in death, the defendant was serving a term of imprisonment in a state facility. *State v. Scherf*, Snohomish County Superior Court Cause No. 11-1-00404-4.

DATE OF CONVICTION: May 9, 2013

SPECIAL SENTENCING: May 15, 2013

JUDGMENT AND SENTENCE: Snohomish County Superior Court  
Cause No. 11-1-00404-4  
May 15, 2013

TRIAL JUDGE: Honorable George Appel

DEFENSE ATTYS: Karen Ann Halverson  
Jon Thomas Scott  
Everett, WA

James Elliot Lobsenz  
Seattle, WA

PROSECUTING ATTYS: Mark Roe, Prosecuting Attorney  
Edward E. Stemler, Deputy Prosecutor  
Paul Stern, Deputy Prosecutor  
3000 Rockefeller  
Everett, WA 98201  
(425) 388-3333

APPELLANT'S ATTYS: (Direct Appeal, WSSC No. 88906-6)  
**RITA GRIFFITH**  
**ATTORNEY AT LAW**  
**4616 25TH AVE NE**  
**SEATTLE, WA 98105-4523**  
**(206) 547-1742**

**MARK LARRANAGA**  
**WALSH & LARRANAGA**  
**705 2ND AVE STE 501**  
**SEATTLE, WA 98104-1715**  
**(206) 325-7900**

RESPONDENT'S ATTYS: (Direct Appeal, WSSC No. 88906-6)  
**MARK ROE, PROSECUTING ATTORNEY**  
**SETH FINE, DEPUTY PROSECUTING ATTORNEY**  
**SNOHOMISH COUNTY COURTHOUSE**  
**3000 ROCKEFELLER AVE**  
**EVERETT, WA 98201-4060**  
**(425) 388-3333**



| <u>DATE</u> | <u>CAUSE</u> | <u>ACTION</u>   |
|-------------|--------------|---|
| 05/15/13    | 11-1-00404-4 | Judgment and Sentence   |
| 05/16/13    | 88906-6 WSSC | Notice for Mandatory Review of Death Sentence Under RCW 10.95.100   |
| 05/31/13    | 88906-6 WSSC | Notice of Appeal  |
| 06/03/13    | 88906-6 WSSC | Notice of Cross-Appeal to the Supreme Court   |
| 06/21/13    | 88906-6 WSSC | Order (Rita Griffith and Mark Larranaga are appointed as counsel)   |
| 08/30/13    | 88906-6 WSSC | Pleading dated August 27, 2013 (the Appellant requests to stop the "general" review of conviction and/or sentence, expedite the mandatory sentence review, and expedite the death sentence imposed); Motion to Strike and Withdraw Notice of Appeal |
| 09/03/13    | 88906-6 WSSC | Response of Petitioner's Counsel to Pleading dated August 27, 2013  |
| 09/03/13    | 88906-6 WSSC | Letter from Appellant (stating he was not clearly thinking and requesting to withdraw his previous motion to strike his appeal)   |
| 08/06/14    | 88906-6 WSSC | Opening Brief of Appellant  |
| 09/02/14    | 88906-6 WSSC | Statement of Additional Grounds for Review  |
| 10/08/14    | 88906-6 WSSC | Order (statement in compliance with RCW 10.95.150)  |
| 07/01/15    | 88906-6 WSSC | Respondent's Brief  |
| 07/30/15    | 88906-6 WSSC | Statement of Additional Grounds for Review  |
| 07/30/15    | 88906-6 WSSC | Court Letter (rejecting petitioner's SAG Reply Brief and related letters)   |
| 11/03/15    | 88906-6 WSSC | Appellant's Reply Brief; Appellant's Motion to File Overlength Reply Brief  |
| 11/03/15    | 88906-6 WSSC | Answer to Motion to File Supplemental Brief   |
| 11/03/15    | 88906-6 WSSC | Appellant's Motion to Permit Filing of Supplemental Assignment of Error and Supplemental Brief in Support   |
| 11/18/15    | 88906-6 WSSC | Order (granting Appellant's Motion to File Overlength Reply Brief and Motion to Permit Filing of Supplemental Assignment of Error and Supplemental Brief in Support.)   |
| 01/21/16    | 88906-6 WSSC | Brief of Respondent in Answer to Supplemental Assignment of Error   |

NAME: SCHIERMAN, Conner Michael  
D.O.B.: September 14, 1981  
Race: Caucasian

DATE OF CRIME: July 16, 2006, or early morning July 17, 2006

PLACE OF CRIME: King County

BRIEF FACTS: Conner Schierman was convicted of four counts of aggravated first degree murder in the deaths of Olga Milkin, 28; her sons Justin, 5, and Andrew, 3; and Milkin's sister, Lyubov Botvina, 24. The aggravating circumstances were (1) there was more than one victim, and (2) the murders were committed to protect or conceal the identity of the perpetrator of a crime. *State v. Schierman*, King County Superior Court Cause No. 06-1-06563-4.

DATE OF CONVICTION: April 12, 2010

SPECIAL SENTENCING: May 5, 2010

JUDGMENT AND SENTENCE: King County Superior Court  
Cause No. 06-1-06563-4  
May 27, 2010

TRIAL JUDGE: Honorable Gregory Canova

DEFENSE ATTYS: James Conroy  
Peter Connick  
Seattle, WA

PROSECUTING ATTYS: Dan Satterberg, Prosecuting Attorney  
Scott O'Toole, Senior Deputy Prosecutor  
King County Courthouse  
516 Third Avenue  
Seattle, WA 98104  
(206) 296-0100

APPELLANT'S ATTYS: (Direct Appeal, WSSC No. 84614-6)  
**SUZANNE ELLIOTT**  
**DAVID ZUCKERMAN**  
**ATTORNEYS AT LAW**  
**705 2<sup>ND</sup> AVENUE, SUITE 1300**  
**SEATTLE, WA 98104-1797**  
**(206) 623-0291**

RESPONDENT'S ATTYS: (Direct Appeal, WSSC No. 84614-6)  
**DAN SATTERBERG, PROSECUTING ATTORNEY**  
**DONNA LYNN WISE, PROSECUTING ATTORNEY**  
**ERIN HAIROPOULOS BECKER, PROSECUTING ATTORNEY**  
**KING COUNTY COURTHOUSE**  
**516 THIRD AVENUE**  
**SEATTLE, WA 98104**  
**(206) 296-0100**

| <u>DATE</u> | <u>CAUSE</u> | <u>ACTION</u>  |
|-------------|--------------|--|
| 06/01/10    | 84614-6 WSSC | Judgment and Sentence  |
| 06/01/10    | 84614-6 WSSC | Notice of Appeal; Motion for Order of Indigency and Affidavit in Support of Motion   |
| 06/02/10    | 84614-6 WSSC | Order Authorizing Appeal <i>In Forma Pauperis</i> , Appointment of Counsel and Preparation of Records  |
| 06/23/10    | 84614-6 WSSC | Order (Suzanne Elliott and David Zuckerman are appointed as counsel.)  |
| 03/02/11    | 84614-6 WSSC | Order (Appellant's Motion to Stay the DOC's Collection of Costs Specifically Waived by Trial Court Order is denied)  |
| 09/29/11    | 06-1-06563-4 | Motion for Access to Juror Information GR 31(j)  |
| 10/26/11    | 84614-6 WSSC | Joint letter response regarding Court's April 29, 2011, remand order. "Motion for Access to Juror Information GR 31(j)" is set for a hearing in the trial court on November 9, 2011. The appellant will send the results to the Supreme Court following the hearing. |
| 11/09/11    | 06-1-06563-4 | Order re Access to Juror Information GR 31(j)  |
| 11/18/13    | 84614-6 WSSC | Appellant's Opening Brief  |
| 07/03/14    | 84614-6 WSSC | Brief of Respondent  |
| 09/15/14    | 84614-6 WSSC | Appellant's Reply Brief  |
| 09/25/14    | 84614-6 WSSC | Order (statement in compliance with RCW 10.95.150)   |
| 02/09/15    | 84614-6 WSSC | Order (granting motion to file an amicus curiae brief on behalf of the American Civil Liberties Union of Washington)   |
| 02/09/15    | 84614-6 WSSC | Brief of Amicus Curiae of the American Civil Liberties Union of Washington   |
| 02/26/15    | 84614-6 WSSC | Respondent's Answer to Amicus Curiae brief   |
| 05/05/15    | 84614-6 WSSC | Oral argument held   |
| 07/08/15    | 84614-6 WSSC | Respondent's Additional Authorities  |
| 12/15/15    | 84614-6 WSSC | Respondent's Second Statement of Additional Authorities  |
| 12/15/15    | 84614-6 WSSC | Petitioner's Fifth Supplemental Authority  |

NAME: WOODS, Dwayne  
D.O.B.: 07-04-69  
Race: Black

DATE OF CRIME: April 27, 1996

PLACE OF CRIME: Spokane County

BRIEF FACTS: Dwayne Woods was convicted of two counts of aggravated first degree murder for the murders of Telisha Shaver (Count 1) and Jade Moore (Count 2). As to Count 1, the aggravating circumstances were: (1) the murder was committed to conceal the commission of a crime or to protect or conceal the identity of any person committing a crime; and (2) there was more than one victim and the murders were part of a common scheme or plan of the defendant. As to Count 2, the aggravating circumstances were: (1) [same as #1 above]; and (2) the murder was committed in the course of or in furtherance of the crime of first degree rape; and (3) [same as #2 for Count 1]. *State v. Woods*, Spokane County Superior Court Cause No. 96-1-01143-7.

DATE OF CONVICTION: June 20, 1997

SPECIAL SENTENCING: June 25, 1997

JUDGMENT AND SENTENCE: Spokane County Superior Court  
Cause No. 96-1-01143-7  
July 23, 1997

TRIAL JUDGE: Honorable Michael E. Donohue

DEFENSE ATTYS: Richard Fasey  
James Sheehan  
James Ames  
Spokane, WA

PROSECUTING ATTYS: Steven Tucker, Prosecuting Attorney  
James R. Sweetser, prior counsel and former Prosecuting Attorney  
John F. Driscoll, Senior Deputy Prosecutor  
Spokane County Prosecutor's Office  
Public Safety Building  
West 1100 Mallon Avenue  
Spokane, WA 99260  
(509) 477-3662

APPELLANT'S ATTYS: Lenell Rae Nussbaum  
Seattle, WA  
Joan M. Fisher  
Oliver W. Loewy  
Federal Public Defender - Id  
Moscow, ID

PETITIONER'S ATTYS: (Personal Restraint Petition #71780-0)  
Lenell Rae Nussbaum  
Seattle, WA  
Judith M. Mandel  
Tacoma, WA



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| 08/12/02 | 71780-0 WSSC   | Additional Reference Hearing Report   |
| 06/16/05 | 71780-0 WSSC   | Opinion denying personal restraint petition. Chief Justice Alexander authored the opinion for the Court. Justice Sanders dissented. <i>In re Woods</i> , 154 Wn.2d 400, 114 P.3d 607 (2005)   |
| 09/30/05 | 71780-0 WSSC   | Order (denying motion for reconsideration)  |
| 10/03/05 | 71780-0 WSSC   | Certificate of Finality   |
| 10/14/05 | C05-319 EDC    | Emergency Order Staying Execution of Dwayne Anthony Woods   |
| 07/21/06 | C05-319 EDC    | Petition for Writ of Habeas Corpus  |
| 08/21/08 | C05-319 EDC    | Order Denying Motion to Expand Record with Documents Re: Johnny Knight  |
| 02/05/09 | C05-319 EDC    | Order Denying Petition, Supplement, and Revised Petition for a Writ of Habeas Corpus; Judgment in a Civil Case  |
| 02/10/09 | C05-319 EDC    | Notice of Appeal  |
| 02/12/09 | C05-319 EDC    | Order (granting stay of execution pending Court's decision regarding certificate of appealability issue; if certificate of appealability is granted, the stay of execution will remain in effect during the pendency of the appeal and until the Court of Appeals issues its mandate)   |
| 04/10/09 | C05-319 EDC    | Order Granting Motion for Certificate of Appealability in Part and Denying in Part  |
| 08/10/11 | 09-99003 9 CIR | Opinion affirming the judgment of the district court. Judge Paez authored the opinion, with Judges Tallman and Smith concurring. <i>Woods v. Sinclair</i> , 655 F.3d 886 (9 <sup>th</sup> Cir. 2011).   |
| 09/29/11 | 09-99003 9 CIR | Order (denying petition for rehearing)  |
| 12/19/11 | 11-7978 USSC   | Petition for Writ of Certiorari   |
| 01/04/12 | 96-1-01143-7   | Notice of Appearance (Suzanne Elliott & David Zuckerman); Motion for Appointment of Counsel; Motion for DNA Testing   |
| 03/26/12 | 11-7978 USSC   | Order (granting petition for writ of certiorari, vacating the judgment, and remanding to the Ninth Circuit for further consideration in light of <i>Martinez v. Ryan</i> .) <i>Woods v. Holbrook</i> , 132 S. Ct. 1819 (2012).  |
| 08/25/14 | 09-99003 9 CIR | Opinion affirming in part and vacating in part the district court's judgment and remanding for the district court to consider in the first instance whether Woods can show cause and prejudice under <i>Martinez v. Ryan</i> . Judge Paez authored the opinion, with Judge Smith concurring. Judge Tallman concurred in part and dissented in part. <i>Woods v. Sinclair</i> , 764 F.3d 1109 (9 <sup>th</sup> Cir. 2014). |
| 09/08/14 | 09-99003 9 CIR | Petition for Rehearing En Banc  |
| 10/30/14 | 09-99003 9 CIR | Order (denying petition for rehearing en banc)  |
| 01/28/15 | 14-931 USSC    | State's Petition for a Writ of Certiorari; Appendix   |

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| 03/05/15 | 14-931 USSC    | Brief Amici Curiae of Arizona, et al.   |
| 04/03/15 | 14-931 USSC    | Brief of Respondent Dwayne Anthony Woods  |
| 04/20/15 | 14-931 USSC    | Petitioner Donald Holbrook's Reply  |
| 05/18/15 | 14-931 USSC    | Petition for writ of certiorari denied; Respondent's motion for leave to proceed in forma pauperis granted. <i>Holbrook v. Woods</i> , 135 S. Ct. 2311 (2015) |
| 05/20/15 | 09-99003 9 CIR | Mandate   |
| 07/15/15 | C05-319 EDC    | Petitioner's Supplemental Brief   |
| 07/15/15 | C05-319 EDC    | Stipulation to File Excerpts of Record as Alternative State Court Record  |
| 08/28/15 | C05-319 EDC    | Respondent's Supplemental Brief Re Claims 4.4, 4.5, and 4.7   |
| 09/14/15 | C05-319 EDC    | Petitioner's Reply Brief  |

NAME: YATES, Robert Lee, Jr.  
D.O.B.: May 27, 1952  
Race: White

DATE OF CRIME: 1997 and 1998

PLACE OF CRIME: Pierce County

BRIEF FACTS: Robert Lee Yates, Jr. was convicted of two counts of aggravated first degree murder for the murders of Melinda Mercer in 1997 and Connie LaFontaine Ellis in 1998. The aggravating circumstances were: (1) there was more than one victim and the murders were part of a common scheme or plan or the result of a single act of the defendant; (2) the murders were committed in the course of, in furtherance of, or in immediate flight from the crime of Robbery in the First Degree. *State v. Yates*, Pierce County Cause No. 00-1-03253-8.

DATE OF CONVICTION: September 19, 2002

SPECIAL SENTENCING: October 3, 2002

JUDGMENT AND SENTENCE: Pierce County Superior Court  
Cause No. 00-1-03253-8  
October 9, 2002

TRIAL JUDGE: Honorable John McCarthy

DEFENSE ATTYS: Roger Hunko Mary Kay High  
Port Orchard, WA Tacoma, WA

PROSECUTING ATTYS: Gerald Horne, Prosecuting Attorney  
Jerry Costello, Deputy Prosecutor  
Barbara Corey-Boulet, Deputy Prosecutor  
930 Tacoma Avenue South  
Tacoma, WA 98402  
(253) 798-7400

APPELLANT'S ATTYS: (Direct Appeal, WSSC No. 73155-1)  
Gregory Link  
Thomas Kummerow  
Nancy Collins  
WA Appellate Project

Roger Hunko (withdrew 11/04/02)  
Port Orchard, WA

PETITIONER'S ATTYS: (Personal Restraint Petition, WSSC No. 82101-1)  
Ronald Ness Judith Mandel  
Port Orchard, WA Xi'an Shaanxi Province ZZ 710063

Jeffrey E. Ellis Steve Witchley  
Portland, OR Seattle, WA



(Federal Habeas Corpus, USDC WDC #C13-0842-RSM)

**JEFFREY E. ELLIS**  
**OR CAPITAL RESOURCE CTR**  
**621 SW MORRISON ST, SUITE 1025**  
**PORTLAND, OR 97205-3813**  
**(206) 218-7076**

**TODD MAYBROWN**  
**ALLEN, HANSEN & MAYBROWN, P.S.**  
**600 UNIVERSITY STREET, SUITE 3020**  
**SEATTLE, WA 98101**  
**(206) 447-9681**

RESPONDENT'S ATTYS:

(Direct Appeal, WSSC No. 73155-1)  
Gerald Horne, Prosecuting Attorney  
Jerry Costello, Deputy Prosecutor  
Barbara Corey-Boulet, Deputy Prosecutor (Withdrawn 02/03/04)  
Kathleen Proctor, Deputy Prosecutor  
Donna Yumiko Masumoto, Deputy Prosecutor

(Personal Restraint Petition, WSSC No. 82101-1)  
Kathleen Proctor, Deputy Prosecutor  
Donna Yumiko Masumoto, Deputy Prosecutor  
Karen Anne Watson, Deputy Prosecutor

(Federal Habeas Corpus, USDC WDC #C13-0842-RSM)  
**ROBERT W. FERGUSON, ATTORNEY GENERAL**  
**PAUL D. WEISSER, SENIOR COUNSEL**  
**CORRECTIONS DIVISION**  
**P.O. BOX 40116**  
**OLYMPIA, WA 98504-0116**  
**(360) 586-1445**

| <u>DATE</u> | <u>CAUSE</u>  | <u>ACTION</u>   |
|-------------|---------------|---|
| 10/17/02    | 73155-1 WSSC  | Notice of Appeal  |
| 09/27/07    | 73155-1 WSSC  | Opinion affirming conviction and death sentence. Justice Owens authored the opinion for the Court. Justices Johnson and Chambers authored opinions concurring. Justice Sanders dissented. <i>State v. Yates</i> , 161 Wn.2d 714, 168 P.3d 359 (2007). |
| 12/24/07    | 73155-1 WSSC  | Order Denying Appellant's Motion for Reconsideration  |
| 01/03/08    | 73155-1 WSSC  | Ruling on Cost Bill (Costs in the amount of \$173,254.08 are awarded to the Office of Public Defense and costs in the amount of \$183.56 are awarded to Respondent State of Washington, Pierce County, to be paid by Appellant Yates).                |
| 06/23/08    | 07-10069 USSC | Petition for Writ of Certiorari denied. <i>Yates v. Washington</i> , 554 U.S. 922 (2008).   |
| 08/01/08    | 73155-1 WSSC  | Mandate   |
| 09/05/08    | 00-1-03253-8  | Death Warrant (setting execution date for September 19, 2008)   |
| 09/08/08    | 82101-1 WSSC  | Application for Stay of Execution Under RAP 16.24(c)  |
| 09/10/08    | 82101-1 WSSC  | Motion for Appointment of Counsel   |
| 09/11/08    | 82101-1 WSSC  | Personal Restraint Petition (placeholder petition)  |
| 09/11/08    | 82101-1 WSSC  | Order Granting Stay of Execution and Appointing Counsel   |

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| 08/03/09 | 82101-1 WSSC | Amended Personal Restraint Petition and Supporting Brief   |
| 11/10/10 | 82101-1 WSSC | Order (Respondent's "Motion to Strike Improper Appendices to Petitioner's Brief and Corresponding Arguments" is granted. "Petitioner's Motion for the Testimony of Bruce Moran to Be Taken By Deposition" is denied. "Petitioner's Motion for Discovery of All Documents and Computer Programs Used to Generate Jury Pools in Pierce County" is denied.) |
| 03/14/13 | 82101-1 WSSC | Opinion denying personal restraint petition. Justice Owens authored the opinion for the Court. Chief Justice Madsen filed a concurring opinion in which Justices Gonzalez and Wiggins joined. <i>In re Yates</i> , 177 Wn.2d 1, 296 P.3d 872 (2013).   |
| 05/06/13 | 82101-1 WSSC | Order (motion for reconsideration denied; motion to strike improper appendices denied)   |
| 05/10/13 | 82101-1 WSSC | Certificate of Finality (\$240,158.53 to be paid to OPD, \$1,104.69 to Pierce County)  |
| 05/13/13 | C13-0842 WDC | Application for Writ of Habeas Corpus; Motion to Appoint Counsel; Request for Stay of Execution  |
| 05/14/13 | C13-0842 WDC | Order Granting Motion for Stay of Execution; Minute Entry (appointing Jeff Ellis and Todd Maybrow)   |
| 01/21/14 | C13-0842 WDC | First Amended Petition for Writ of Habeas Corpus; Petitioner's Motion for Stay and Abeyance  |
| 01/21/14 | 89792-1 WSSC | Personal Restraint Petition [Second]   |
| 01/27/14 | C13-0842 WDC | Respondent's Submission of State Court Record Pursuant to CR 104(i)(1)   |
| 01/31/14 | C13-0842 WDC | Verification by Robert Yates   |
| 02/07/14 | C13-0842 WDC | Order Granting Petitioner's Motion for Stay and Abeyance (all proceedings stayed during pendency of Yates's personal restraint petition in Cause No. 89792-1)  |
| 07/09/15 | 89792-1 WSSC | Opinion dismissing second personal restraint petition as untimely. Justice Owens authored the opinion for a unanimous court. <i>In re Yates</i> , 183 Wn.2d 572, 353 P.3d 1283 (2015)  |
| 07/15/15 | 89792-1 WSSC | Cost Bill  |
| 08/04/15 | 89792-1 WSSC | Certificate of Finality  |
| 08/14/15 | 89792-1 WSSC | Ruling on Cost Bill  |
| 08/13/15 | C13-0842 WDC | Order Lifting Stay of Proceedings  |
| 08/28/15 | C13-0842 WDC | Notice of Filing Respondent's Supplemental Submission of State Court Record Pursuant to CR 104(i)(1)   |
| 09/24/15 | 89792-1 WSSC | Supplemental Judgment (Costs of \$542.00 are taxed in favor of Respondents; cost of \$7.04 are taxed in favor of Washington State Office of Public Defense and against Petitioner)   |
| 09/11/15 | C13-0842 WDC | State Court Record (Volume XXXI filed by Respondent)   |
| 10/06/15 | C13-0842 WDC | Minute Entry (Respondent's answer to petition due January 25, 2016; Petitioner's reply to answer due April 25, 2016)   |

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|----------|--------------|---|
| 01/19/16 | C13-0842 WDC | Minute Order (granting Respondent's unopposed motion for extension of time to Answer the Petition. Response due March 10, 2016) |
| 03/10/16 | C13-0842 WDC | Respondent's Response to Petition for Writ of Habeas Corpus   |