

# CAPITAL PUNISHMENT CASE STATUS REPORT

August 4, 2008

## CAPITAL LITIGATION TEAM:

Timothy N. Lang, Division Chief  
Paul D. Weisser, Senior Counsel  
John J. Samson  
Donna H. Mullen  
Gregory J. Rosen  
Assistant Attorneys General

Shaunna F. Carter, Paralegal  
Kathy Jerenz, Legal Assistant

ROBERT M. MCKENNA  
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.

## INDEX

	Page
BROWN, Cal Coburn	3
CROSS, Dayva Michael	7
DAVIS, Cecil Emile	11
ELMORE, Clark Richard	13
GENTRY, Jonathan Lee	17
STENSON, Darold Ray	21
WOODS, Dwayne L.	26
YATES, Robert Lee, Jr.	32

## KEY TO COURT ABBREVIATIONS

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

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
<u>NAME:</u>		BROWN, Cal Coburn D.O.B. April 16, 1958 Race: White
<u>DATE OF CRIME:</u>		May 24, 1991
<u>PLACE OF CRIME:</u>		King County
<u>BRIEF FACTS:</u>		Cal Brown was convicted of aggravated first degree murder for the stabbing and strangulation death of Holly Washa. The aggravating circumstances were that the murder was committed (1) to conceal the identity of the person committing the crime, and (2) in the course of or furtherance of Kidnapping in the First Degree, Rape in the First Degree, and Robbery in the First Degree. <i>State v. Brown</i> , King County Superior Court Cause No. 91-1-03233-1.
<u>DATE OF CONVICTION:</u>		December 10, 1993
<u>SPECIAL SENTENCING:</u>		December 27, 1993
<u>JUDGMENT AND: SENTENCE</u>		King County Superior Court Cause No. 91-1-03233-1 January 28, 1994
<u>TRIAL JUDGE:</u>		Honorable Ricardo S. Martinez
<u>DEFENSE ATTYS:</u>		Terry L. Mulligan Port Orchard, WA Kern Cleven Bellingham, WA  Lin-Marie Hupp Kent, WA
<u>PROSECUTING ATTYS:</u>		Honorable Norm Maleng King County Prosecutor Alfred Matthews, Deputy Theresa Fricke, Deputy 701 Fifth Avenue, Suite 4800 Seattle, WA 98104 (206) 296-9000
<u>APPELLANT'S ATTYS:</u>		(Personal Restraint Petition, WSSC #66686-5) Gilbert Levy Seattle, WA  Judith Mandel (withdrew 10/28/98) Port Orchard, WA  Michael Trickey (withdrew 05/01/96) Seattle, WA  Jeannette Jameson Mill Creek, WA  Ronald D. Ness (withdrew 10/28/98) Port Orchard, WA
<u>PETITIONER'S ATTYS:</u>		(Federal Habeas Corpus, USDC WDC #C01-715C) <b>GILBERT LEVY</b> <b>ATTORNEY AT LAW</b> <b>2001 WESTERN AVENUE</b> <b>MARKET PLACE TWO, SUITE 200</b> <b>SEATTLE, WA 98121-2163</b> <b>(206) 443-0670</b>  <b>SUZANNE LEE ELLIOTT</b> <b>ATTORNEY AT LAW</b> <b>1300 HOGE BUILDING</b> <b>705 SECOND AVENUE</b> <b>SEATTLE, WA 98104</b> <b>(206) 623-0291</b>

DATE            CAUSE            ACTION

RESPONDENT'S ATTYS:

(Personal Restraint Petition, WSSC #66686-5)  
 Norm Maleng, Prosecuting Attorney  
 Ann Marie Summers, Deputy  
 Deborah Dwyer, Deputy

(Federal Habeas Corpus, USDC WDC #C01-715C)  
**ROBERT M. MCKENNA, ATTORNEY GENERAL**  
**JOHN J. SAMSON, ASSISTANT ATTORNEY GENERAL**  
 Diana M. Sheythe, Assistant Attorney General (withdrew 11/24/03)  
**CORRECTIONS DIVISION**  
**PO BOX 40116**  
**OLYMPIA, WA 98504-0116**  
**(360) 586-1445**

DATE            CAUSE            ACTION

01/28/94	61320-6 WSSC	<i>State v. Brown</i> ; Notice of Appeal
02/01/94	61320-6 WSSC	State's Notice of Cross-Appeal
06/27/96	61320-6 WSSC	Oral argument held
07/24/97	61320-6 WSSC	Opinion affirming conviction and death sentence. Justice Smith authored the opinion for the Court. Justice Madsen authored an opinion concurring in part and dissenting in part, in which Justices Alexander and Sanders joined. <i>State v. Brown</i> , 132 Wn.2d 529, 940 P.2d 546 (1997).
03/09/98	97-7283 USSC	Petition for Writ of Certiorari denied. <i>Brown v. Washington</i> , 523 U.S. 1007, 118 S. Ct. 1192, 140 L. Ed. 2d 322 (1998)
03/13/98	61320-6 WSSC	Mandate issued
03/16/98	61320-6 WSSC	Amended Mandate (with regards to month, date and year)
04/08/98	66686-5 WSSC	Death Warrant (setting execution for May 13, 1998)
04/08/98	66686-5 WSSC	Order (application for stay of execution, pursuant to RAP 16.24, is granted and further proceedings in the trial court are stayed until further order of this court)
04/19/01	66686-5 WSSC	Opinion denying personal restraint petition. Justice Smith authored the opinion for the Court. Justice Sanders dissented. <i>In re Brown</i> , 143 Wn.2d 431, 21 P.3d 687 (2001)
06/14/01	66686-5 WSSC	Certificate of Finality; Supplemental Judgment (costs in the amount of \$64,481.44 awarded to the Appellate Indigent Defense Fund and \$1,145.00 to the King County Prosecutor's Office to be paid by the Petitioner)
06/15/01	66686-5 WSSC	Order (the stay of execution is hereby lifted as of the date of the issuance of the certificate of finality)
06/19/01	C01-715 WDC	Order Staying Execution
07/15/02	C01-715-WDC	Amended Petition Under 28 U.S.C. § 2254 For Writ of Habeas Corpus
09/13/02	C01-715 WDC	Respondent's Answer to Amended Petition for a Writ of Habeas Corpus

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
11/04/02	C01-715 WDC	Reply to Traverse
11/03-4/03	C01-715 WDC	Evidentiary Hearing held
09/16/04	C01-715 WDC	Order (denying petition for writ of habeas corpus); Judgment in a Civil Case
11/09/04	04-35998 9CIR	Petitioner's Notice of Appeal
07/14/05	04-35998 9CIR	Oral argument held
12/08/05	04-35998 9CIR	Opinion (affirming district court's judgment regarding the conviction but reversing and remanding with respect to the death sentence on the juror exclusion claim. Judge Kozinski authored the opinion, with Judges Reinhardt and Berzon concurring). <i>Brown v. Lambert</i> , 431 F.3d 661(9th Cir. 2005)
12/20/05	04-35998 9CIR	Petition for Rehearing En Banc
01/27/06	04-35998 9CIR	Answer to Petition for Rehearing En Banc
06/19/06	04-35998 9CIR	Order and Amended Opinion (opinion filed December 8, 2005 and reported at 431 F.3d 661, is withdrawn, and is replaced by the Amended Opinion. The petition for rehearing is otherwise denied. A judge requested a vote on whether to rehear this case en banc, but a majority of the non-recused active judges did not vote in favor of en banc consideration. The petition for rehearing en banc is denied. Judge Tallman, joined by Judges O'Scannlain, Kleinfeld, Callahan, and Bea, dissented from denial of rehearing en banc). <i>Brown v. Lambert</i> , 451 F.3d 46 (9th Cir. 2006).
01/12/07	06-413 USSC	Order (granting petition for writ of certiorari and Respondent's motion for leave to proceed in forma pauperis). <i>Uttecht v. Brown</i> , 127 S. Ct. 1055 (2007).
04/17/07	06-413 USSC	Oral argument held
06/04/07	06-413 USSC	Opinion reversing the judgment of the Ninth Circuit and remanding for further proceedings. Justice Kennedy authored the opinion for the Court. Justice Stevens, joined by Justices Souter, Ginsburg, and Breyer, dissented. Justice Breyer, joined by Justice Souter, authored a separate dissent. <i>Uttecht v. Brown</i> , 127 S. Ct. 2218 (2007).
07/06/07	06-413 USSC	Judgment
09/05/07	04-35998 9CIR	Appellant's Supplemental Opening Brief
09/21/07	04-35998 9CIR	Supplemental Brief of Respondent-Appellee
10/15/07	04-35998 9 CIR	Appellant's Supplemental Reply Brief
01/25/08	04-35998 9 CIR	Oral argument held
06/27/08	04-35998 9 CIR	Opinion (affirming the judgment of the district court. Chief Judge Kozinski authored the majority opinion. Judge Reinhardt dissented). <i>Brown v. Uttecht</i> , --- F.3d ---, 2008 WL 2552689 (9th Cir. June 27, 2008).
07/02/08	04-35998 9 CIR	Motion to Continue Time for Filing Petition for Rehearing En Banc Pursuant to General Order 6.3(a)
07/02/08	04-35998 9 CIR	Order (Motion for Extension of Time to File Petition for Rehearing is granted. Petition due on or before July 18, 2008)

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
07/18/08	04-35998 9 CIR	Petition for Rehearing En Banc

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
<u>NAME:</u>		CROSS, Dayva Michael D.O.B.: September 19, 1959 Race: Caucasian
<u>DATE OF CRIME:</u>		March 6, 1999
<u>PLACE OF CRIME:</u>		King County
<u>BRIEF FACTS:</u>		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. <i>State v. Cross</i> , King County Cause 99-1-02212-9.
<u>DATE OF GUILTY PLEA:</u>		October 23, 2000
<u>SPECIAL SENTENCING:</u>		May 7, 2001
<u>JUDGMENT AND SENTENCE:</u>		King County Superior Court Cause No. 99-1-02212-9 June 22, 2001
<u>TRIAL JUDGE:</u>		Honorable Joan DuBuque
<u>DEFENSE ATTYS:</u>		Mark Larranaga Richard Warner Seattle, WA
<u>PROSECUTING ATTYS:</u>		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
<u>APPELLANT'S ATTYS:</u>		(Direct Appeal, WSSC Cause #71267-1) Todd Maybrown Allen Hansen & Maybrown P.S. 600 University Street, Suite 3020 Seattle, WA 98101-4105 (206) 447-9681  Kathryn Ross Jones, Ross, Besman & Connolly 828 Second Street, Suite D Mukilteo, WA 98275-1601 (425) 348-7937
<u>PETITIONER'S ATTYS:</u>		(Personal Restraint Petition, Washington Supreme Court #79761-7) <b>TODD MAYBROWN</b> <b>ALLEN HANSEN &amp; MAYBROWN P.S.</b> <b>600 UNIVERSITY ST., SUITE 3020</b> <b>SEATTLE, WA 98101-4105</b> <b>(206) 447-9681</b>  <b>JAMES LOBSENZ</b> <b>CARNEY BADLEY SPELLMAN</b> <b>701 5<sup>TH</sup> AVENUE, SUITE 3600</b> <b>SEATTLE, WA 98104-7010</b> <b>(206) 622-8020</b>
<u>RESPONDENT'S ATTYS:</u>		<b>NORM MALENG, PROSECUTING ATTORNEY</b> Timothy Bradshaw, Deputy (withdrew 01/24/03) <b>DONALD RAZ, DEPUTY</b> <b>JAMES WHISMAN, DEPUTY</b> <b>RANDI J. AUSTELL, DEPUTY</b>

DATE      CAUSE      ACTION

DATE      CAUSE      ACTION

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> , 127 S. Ct. 559 (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
08/01/07	79761-7 WSSC	Petitioner's Motion for Leave to Conduct Discovery
09/05/07	79761-7 WSSC	Department of Corrections' Response to Motion for Leave to Conduct Discovery; Declaration of Richard Morgan.
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.)
09/07/07	79761-7 WSSC	Reply in Support of Petitioner's Motion for Leave to Conduct Discovery
09/18/07	99-1-02212-9	Defendant's Motion to Allow Contact with Jurors
09/26/07	79761-7 WSSC	Respondent's Objection to Ex Parte Order Granting Investigator on Jury Misconduct Issue and Request for Reconsideration
10/01/07	79761-7 WSSC	Petitioner's Response to Respondent's Motion for Reconsideration
10/01/07	79761-7 WSSC	Order (Counsel for Petitioner directed to file answer to Respondent's Objection to Ex Parte Order Granting Investigator on Jury Misconduct Issue and Request for Reconsideration by October 8, 2007. Parties are directed to advise the Court in writing no later than October 8, 2007 as to what action the trial court judge took on motion for contact with jurors)
10/01/07	79761-7 WSSC	Petitioner's Motion to Vacate Superior Court's Order Precluding Contact with Jurors or, in the Alternative, to Permit Discovery Under RAP 16.26; Supplemental Declaration of Todd Maybrown.



<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
10/02/07	79761-7 WSSC	Joint Motion to Delay Discovery, Briefing, and the Filing of Supporting Documents Relating to Lethal Injection Claims
10/04/07	79761-7 WSSC	Response to RAP 16.26 Motion and Opposition to Request to Lift Order Limiting Juror Contact
10/04/07	79761-7 WSSC	Order (granting Joint Motion to Delay Discovery, Briefing, and the Filing of Supporting Documents Relating to Lethal Injection Claims; personal restraint petition now due January 29, 2008)
10/04/07	79761-7 WSSC	Clarification of Objection to RAP 16.27 Funding Order and Update on Trial Court Proceedings
10/23/07	79761-7 WSSC	Order (Parties are again directed to advise the Court in writing as to what action the trial court judge took on motion for contact with jurors no later than October 24, 2007)
10/24/07	79761-7 WSSC	Placeholder Petition
10/31/07	79761-7 WSSC	Response to Placeholder Petition
11/05/07	79761-7 WSSC	Reply to Response to 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	Petitioner's Motion for Travel Expenses.
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.
02/08/08	79761-7 WSSC	Order (Petitioner's Motion for Travel Expenses is denied without prejudice).
04/24/08	79761-7 WSSC	RAP 16.26 Motion for Discovery
04/24/08	79761-7 WSSC	Respondent's Motion for Judicial Determination of Petitioner's Competency
05/29/08	79761-7 WSSC	Motion for Extension of Time to File Response to Petition
05/30/08	79761-7 WSSC	Petitioner's Response in Opposition to Respondent's Motion for Judicial Determination of Competency; Declaration of Todd Maybrown in Opposition to Respondent's Motion for a Competency Evaluation; Declaration of James E. Lobsenz
06/02/08	79761-7 WSSC	Reply to Response on Issue of Cross' Competency
06/04/08	79761-7 WSSC	Reply to Response to State's RAP 16.26 Motion for Discovery
06/04/08	79761-7 WSSC	Order Granting Motion for Extension of Time

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
06/10/08	79761-7 WSSC	Petitioner's Motion for Oral Argument Regarding Respondent's RAP 16.26 Motion for Discovery
06/16/08	79761-7 WSSC	Answer to Petitioner's Motion for Oral Argument Re: RAP 16.26 Discovery Motion
06/27/08	79761-7 WSSC	Petitioner's Reply in Support of Motion for Oral Argument Regarding Respondent's RAP 16.26 Motion for Discovery
07/10/08	79761-7 WSSC	Order (Respondent's Motion for Judicial Determination is denied, Respondent's RAP 16.26 Motion for Discovery is denied, and Petitioner's Motion for Oral Argument is denied)

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
<u>NAME:</u>		DAVIS, Cecil Emile D.O.B.: September 1, 1959 Race: Black
<u>DATE OF CRIME:</u>		January 25, 1997
<u>PLACE OF CRIME:</u>		Pierce County
<u>BRIEF FACTS:</u>		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. <i>State v. Davis</i> , Pierce County Cause 97-1-00432-4.
<u>DATE OF CONVICTION:</u>		February 6, 1998
<u>SPECIAL SENTENCING:</u>		February 10-12, 1998 May 15, 2007
<u>JUDGMENT AND SENTENCE:</u>		Pierce County Superior Court Cause No. 97-1-00432-4 February 23, 1998 May 18, 2007
<u>TRIAL JUDGE:</u>		Honorable Frederick W. Fleming
<u>DEFENSE ATTYS:</u>		Ronald Ness John L. Cross Port Orchard, WA  Julia Lindstrom Lloyd Alton, Jr. Tacoma, WA
<u>PROSECUTING ATTYS:</u>		Gerald Horne, Prosecuting Attorney John W. Ladenburg (Former Prosecuting Attorney) John M. Neeb, Deputy Prosecutor (Withdraw 01/26/00) John Hillman, Deputy Prosecutor (Former Prosecuting Attorney) Gerald T. Costello, Deputy Prosecutor Pierce County Prosecutor's Office County-City Building 930 Tacoma Avenue South, Room 946 Tacoma, WA 98402-2171
<u>APPELLANT'S ATTYS:</u>		(Direct Appeal, WSSC Cause #66537-1) Judith Mandel Port Orchard, WA  (Direct Appeal, WSSC Cause #80209-2) <b>ERIC BROMAN</b> <b>NIELSEN BROMAN &amp; KOCH LLC</b> <b>1908 E. MADISON STREET</b> <b>SEATTLE, WA 98122-2842</b>
		Ronald D. Ness Port Orchard, WA  <b>DAVID KOCH</b> <b>NIELSEN BROMAN &amp; KOCH LLC</b> <b>1908 E. MADISON STREET</b> <b>SEATTLE, WA 98122-2842</b>

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
		(206) 623-2488 (206) 623-2488
<u>PETITIONER'S ATTYS:</u>		(Personal Restraint Petition, WSSC #70834-7) Gilbert Levy Catherine Ann Chaney
<u>RESPONDENT'S ATTYS:</u>		<b>GERALD HORNE, PROSECUTING ATTORNEY</b> Barbara Corey-Boulet, Deputy John Hillman, Deputy <b>JOHN MARTIN NEEB, DEPUTY</b> <b>KATHLEEN PROCTOR, DEPUTY</b>
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).
11/29/04	70834-7 WSSC	Certificate of Finality
05/15/07	97-1-00432-4	Sentencing hearing (death sentence imposed)
05/18/07	97-1-00432-4	Judgment and Sentence; Warrant of Commitment to DOC
06/06/07	80209-2 WSSC	Notice of Appeal
08/08/07	80209-2 WSSC	Order (Eric Broman is appointed as lead counsel and David Koch is appointed as co-counsel to represent Cecil Davis in this appeal).
09/13/07	80209-2 WSSC	Notice of Appearance by Kathleen Proctor

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>								
<u>NAME:</u>	ELMORE, Clark Richard (aka James Elmore aka James Lee Dickey) D.O.B.: November 17, 1951 Race: White									
<u>DATE OF CRIME:</u>	April 17, 1995									
<u>PLACE OF CRIME:</u>	Whatcom County									
<u>BRIEF FACTS:</u>	Clark Richard Elmore pleaded guilty to one count of aggravated first degree murder of Christy Onstad, 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. <i>State v. Elmore</i> , Whatcom County Cause 95-1-00310-1.									
<u>DATE OF CONVICTION:</u>	July 6, 1995									
<u>SPECIAL SENTENCING:</u>	March 12, 1996									
<u>JUDGMENT AND SENTENCE:</u>	Whatcom County Superior Court Cause No. 95-1-00310-1 May 3, 1996									
<u>TRIAL JUDGE:</u>	Honorable David Nichols									
<u>DEFENSE ATTYS:</u>	John Komorowski Douglas Hyldahl Bellingham, WA									
<u>PROSECUTING ATTYS:</u>	David S. McEachran, Prosecuting Attorney Whatcom County Prosecutor's Office Whatcom County Courthouse 311 Grand Avenue Bellingham, WA 98225 (360) 676-6784									
<u>APPELLANT'S ATTYS:</u>	<table border="0"> <tr> <td colspan="2">(Direct Appeal, Washington Supreme Court #64085-8)</td> </tr> <tr> <td>Michael P. Iaria Seattle, WA</td> <td>Meredith Martin Rountree Austin, TX</td> </tr> <tr> <td>Rita Griffith Seattle, WA</td> <td>Charlotte Cassady (Withdrawn 03-06-98) Mobile, AL</td> </tr> <tr> <td colspan="2">Jon Ostlund (06/17/96) Bellingham, WA</td> </tr> </table>		(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	
(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										
<u>PETITIONER'S ATTYS:</u>	<table border="0"> <tr> <td colspan="2">(Personal Restraint Petition, Washington Supreme Court #70233-1)</td> </tr> <tr> <td>Jeffrey E. Ellis The Defender Association 810 Third Avenue Suite 800 Seattle, WA 98104-1655 (206) 447-3900</td> <td>Meredith Martin Rountree 510 South Congress Avenue Suite 308 Austin, TX 78704-1739 (512) 320-0334</td> </tr> </table>		(Personal Restraint Petition, Washington Supreme Court #70233-1)		Jeffrey E. Ellis The Defender Association 810 Third Avenue Suite 800 Seattle, WA 98104-1655 (206) 447-3900	Meredith Martin Rountree 510 South Congress Avenue Suite 308 Austin, TX 78704-1739 (512) 320-0334				
(Personal Restraint Petition, Washington Supreme Court #70233-1)										
Jeffrey E. Ellis The Defender Association 810 Third Avenue Suite 800 Seattle, WA 98104-1655 (206) 447-3900	Meredith Martin Rountree 510 South Congress Avenue Suite 308 Austin, TX 78704-1739 (512) 320-0334									

DATE            CAUSE            ACTION

(Federal Habeas Corpus, USDC WDC #C08-0053)

**JEFFREY E. ELLIS**  
**ELLIS, HOLMES & WITCHLEY**  
**705 SECOND AVENUE, SUITE 401**  
**SEATTLE, WA 98104**  
**(206) 262-0300**

**STEVE WITCHLEY**  
**ELLIS, HOLMES & WITCHLEY**  
**705 SECOND AVENUE, SUITE 401**  
**SEATTLE, WA 98104**  
**(206) 262-0300**

RESPONDENT'S ATTYS:

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

(Federal Habeas Corpus, USDC WDC #C08-0053)

**ROBERT M. MCKENNA, ATTORNEY GENERAL**  
**GREGORY J. ROSEN, ASSISTANT ATTORNEY GENERAL**  
**RONDA D. LARSON, ASSISTANT ATTORNEY GENERAL**  
**CORRECTIONS DIVISION**  
**PO BOX 40116**  
**OLYMPIA, WA 98504-0116**  
**(360) 586-1445**

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; request for appointment of counsel will be considered upon receipt of a recommendation from the Office of Public Defense)
11/15/00	70233-1 WSSC	Petitioner's Statement Pursuant to RAP 16.25
11/16/00	70233-1 WSSC	Order (appointing Jeffrey Ellis and Meredith Martin Rountree as counsel)
04/06/01	70233-1 WSSC	Petitioner's ex parte motion for appointment of mental health experts and for filing motion under seal
04/10/01	70233-1 WSSC	Petitioner's ex parte motion for appointment of an investigator
04/16/01	70233-1 WSSC	Petitioner's ex parte motion for appointment of an investigator
04/24/01	70233-1 WSSC	Petitioner's ex parte motion for appointment of attorney expert on standards practice
05/03/01	70233-1 WSSC	Petitioner's ex parte motion for appointment of mental health experts

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
06/04/01	70233-1 WSSC	Notation Order on Motions (motions granted)
06/29/01	70233-1 WSSC	Petitioner's Personal Restraint Petition and Brief in Support
07/17/01	70233-1 WSSC	Order (the motion to transport is granted with the following conditions: no one other than the Department of Corrections personnel, relevant medical personnel, and counsel for Mr. Elmore shall be notified of the date, time or place of the testing or be present during testing. Counsel shall give notice to the Department of Corrections at least 24 hours prior to the medical procedures if counsel elects to be present. The Department of Corrections shall have the ultimate authority over the arrangements for transporting Mr. Elmore)
07/23/01	70233-1 WSSC	Declaration from Petitioner (acknowledging receipt of the personal restraint petition and his consent to the petition being filed on his behalf)
11/14/01	70233-1 WSSC	Petitioner's Ex Parte Motion for Additional Funds for Court Reporter [filed under seal]
11/20/01	70233-1 WSSC	Response to Personal Restraint Petition and Brief
12/31/01	70233-1 WSSC	Petitioner's Reply in Support of Personal Restraint Petition [Tab D of the brief is a sealed document]
01/02/02	70233-1 WSSC	Petitioner's Motion for Subpoena Duces Tecum for Medical Records
01/10/02	70233-1 WSSC	Order (Petitioner's motion for subpoena duces tecum for medical records of Juror #12 is denied without prejudice)
04/01/02	70233-1 WSSC	Petitioner's Ex Parte Motion for Additional Compensation for Expert Services (Sealed)
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)
03/14/03	70233-1 WSSC	Petitioner's Motion to Expand Scope of Reference Hearing
04/03/03	70233-1 WSSC	Order (Petitioner's motion to expand scope of reference hearing is denied)
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
04/12/05	70233-1 WSSC	Supplemental Brief of Petitioner
05/11/05	70233-1 WSSC	Respondent's Supplemental Brief

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
12/08/06	70233-1 WSSC	Letter from Court notifying counsel that the pending PRP has been set on the Court's calendar for January 4, 2007, En Banc without oral argument.
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)
12/03/07	70233-1 WSSC	Cost Bill (\$238,315.31 to be paid to OPD, \$7,643.22 to Whatcom County)
12/10/07	70233-1 WSSC	Petitioner's Motion for Reconsideration
12/11/07	70233-1 WSSC	Supplemental Cost Bill (showing breakdown of OPD expenses)
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	Stipulated Motion Regarding Filing of Amended Petition
01/18/08	C08-0053 WDC	Order Permitting Elmore to File Amended Petition
01/18/08	C08-0053 WDC	Order Granting Motion for Stay of Execution
02/22/08	70233-1 WSSC	Order Denying Motion for Reconsideration
02/27/08	C08-0053 WDC	Notice of Washington Supreme Court's Denial of Motion to Reconsider
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
05/06/08	C08-0053 WDC	Motion to Set Deadline for Respondent's Answer to Elmore's Amended Habeas Petition
05/07/08	C08-0053 WDC	Order Granting Motion to Set Deadline for Answer to Amended Habeas Petition
05/07/08	C08-0053 WDC	Respondent's Motion for Extension of Time to File Submission of Relevant State Court Record
05/08/08	C08-0053 WDC	Order Granting Motion for Extension of Time to File Submission of Relevant State Court Record
05/29/08	C08-0053 WDC	Respondent's Submission of State Court Record Pursuant to CR 104(i)(1)



<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
<u>NAME:</u>		GENTRY, Jonathan Lee D.O.B.: August 7, 1956 Race: Black
<u>DATE OF CRIME:</u>		June 13, 1988
<u>PLACE OF CRIME:</u>		Kitsap County
<u>BRIEF FACTS:</u>		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. <i>State v. Gentry</i> , Kitsap County Superior Court Cause No. 88-1-00395-3.
<u>DATE OF CONVICTION:</u>		June 26, 1991
<u>SPECIAL SENTENCING:</u>		July 2, 1991
<u>JUDGMENT AND SENTENCE:</u>		Kitsap County Superior Court Cause No. 88-1-00395-3 July 22, 1991
<u>TRIAL JUDGE:</u>		Honorable Terence Hanley
<u>DEFENSE ATTYS:</u>		Frederick D. Leatherman, Jr. Jeffery P. Robinson (trial)
<u>PROSECUTING ATTYS:</u>		Russell Hauge, Prosecuting Attorney C. Danny Clem (former Prosecuting Attorney) Irene K. Asai, Deputy Prosecuting Attorney Brian T. Moran, Deputy Prosecuting Attorney
<u>APPELLANT'S ATTYS:</u>		(Direct Appeal, Washington Supreme Court #58415-0) Michael P. Iaria Seattle, WA Frederick D. Leatherman, Jr. Seattle, WA
<u>PETITIONER'S ATTYS:</u>		(Personal Restraint Petition, Washington Supreme Court #62677-4; Federal Habeas Corpus, USDC WDC #C99-0289L)  <b>SCOTT ENGELHARD</b> <b>320 MAYNARD BUILDING</b> <b>119 FIRST AVENUE SOUTH</b> <b>SEATTLE, WA 98104</b> <b>(206) 749-0117</b>  Brian Tsuchida (withdrew on 5/13/08) Seattle, WA
<u>RESPONDENT'S ATTYS:</u>		(Personal Restraint Petition, Washington Supreme Court #62677-4) Russell Hauge, Prosecuting Attorney Randy Sutton, Deputy Pamela B. Loginsky, Special Deputy Washington Association Of Prosecuting Attorneys

DATE            CAUSE            ACTION

RESPONDENT'S ATTYS:

(Federal Habeas Corpus, USDC WDC #C99-0289L)  
**ROBERT M. MCKENNA, 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**

DATE            CAUSE            ACTION

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 date of December 5, 1995 pending certificate of finality or further order of the court
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)
03/01/99	C99-0289 WDC	Application for Appointment of Counsel
03/08/99	C99-0289 WDC	Order Appointing Counsel (Scott J. Engelhard and Meredith Martin Rountree)
03/09/99	62677-4 WSSC	Petitioner's Motion for Reconsideration
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 (the State of Washington is awarded costs in the total amount of \$178,869.57 to be paid by the Petitioner, Jonathan Lee Gentry)
10/22/99	C99-0289 WDC	Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
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
02/11/00	C99-0289 WDC	Respondent's Amended Answer and Memorandum of Authorities
06/02/00	C99-0289 WDC	Order (denying motion to prohibit Assistant Attorney General Brian Moran from participating in the litigation of this case); Order (granting in part and denying in part Petitioner's motion for leave to conduct discovery)
07/12/01	C99-0289 WDC	Order Regarding Exhaustion of Claims (the following claims presented were in fact exhausted in the Washington courts and may be considered here: (1) the Brady/Napue claim regarding Brian Dyste; (2) the victim impact statement claims; (3) the claim regarding the admission of petitioner's previous conviction; and (4) the juror exclusion claim. The following claims were unexhausted and cannot be considered here: (1) the Brady/Napue claims regarding Leonard Smith, Timothy Hicks, and detective misconduct; and (2) the ineffective assistance of counsel claims.)
08/30/01	C99-0289 WDC	Order for Clarification of Exhaustion Order; Order Deferring Motion to Conduct Discovery
03/25/03	C99-0289 WDC	Order Denying Motion for Reconsideration and Regarding Related Matters
07/02/03	C99-0289 WDC	Order Regarding Procedural Default (the claims identified as unexhausted in the Court's Order of Clarification [08/30/01] are now procedurally barred; directing the parties to file memoranda regarding cause and prejudice)
03/08/04	C99-0289 WDC	Oral argument held re: cause and prejudice; Court directs the filing of supplemental briefs not to exceed two pages re: applicability of <i>Banks v. Dretke</i> by March 15, 2004
03/26/04	C99-0289 WDC	Order Regarding Cause and Prejudice (reconsidering <i>sua sponte</i> , and reversing, the Court's prior decision that the <i>Brady/Napue</i> claims concerning Timothy Hicks and Detectives Wright and Wagner are unexhausted and procedurally defaulted; reserving ruling as to whether Gentry has shown cause for his default regarding the Leonard Smith claims pending an evidentiary hearing; concluding that Gentry has failed to show cause to excuse his default of the penalty phase ineffective assistance claim; denying Gentry's motion to strike)
08/03/05	C99-0289 WDC	Order Regarding Discovery and Evidentiary Hearing (granting Petitioner's request to conduct depositions of Brian Moran, Timothy Hicks, Brian Dyste, Detective Wright, Detective Wagner, and CCO Karen Adams; denying Respondent's request for depositions; scheduling evidentiary hearing on Petitioner's <i>Brady/Napue</i> claims)
01/05/06	C99-0289 WDC	Petitioner's Motion for Summary Judgment
01/23/06	C99-0289 WDC	Response in Opposition to Motion for Summary Judgment
01/27/06	C99-0289 WDC	Reply in Support of Motion for Summary Judgment
03/6-9/06	C99-0289 WDC	Evidentiary hearing held
03/15/06	C99-0289 WDC	Minute Order (the Court has conducted an in camera review of witness Jan Mahan's taped interview and written notes from her subsequent telephone conversation with Brian Dyste. The Court concludes that the <i>Gentry</i> case is never mentioned or referenced in these materials and that they have no bearing on this proceeding).

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
03/28/06	C99-0289 WDC	Petitioner's Report of Kay Sweeney in Support of Claim that Counsel was Ineffective for Failing to Investigate Crime Scene Evidence
05/22/06	C99-0289 WDC	Petitioner's Post-Evidentiary Hearing Brief ; Petitioner's Motion for Discovery Deposition of Leonard Smith; Petitioner's Motion to Admit Supplemental Exhibits
06/05/06	C99-0289 WDC	Response to Motion to Depose Leonard Smith; Response to Motion to Supplement Evidentiary Hearing Exhibits
06/08/06	C99-0289 WDC	Petitioner's Reply to Response Motion for Discovery Deposition of Leonard Smith; Petitioner's Reply to Response to Motion to Admit Supplemental Exhibits
06/29/06	C99-0289 WDC	Respondent's Post Hearing Brief
07/17/06	C99-0289 WDC	Reply in Support of Petitioner's Post-Evidentiary Hearing Brief
08/28/06	C99-0289 WDC	Order on Motion for Summary Judgment (denying Petitioner's motion for summary judgment re: claim A [dismissal of juror for cause])
10/18/07	C99-0289 WDC	Respondent's Motion for Summary Judgment and Memorandum in Support Thereof
11/13/07	C99-0289 WDC	Petitioner's Response to Respondent's Motion for Summary Judgment and Cross Motion for Summary Judgment
11/19/07	C99-0289 WDC	Respondent's Reply and Response to Petitioner's Cross-Motion for Summary Judgment
12/07/07	C99-0289 WDC	Reply in Support of Petitioner's Cross-Motion for Summary Judgment
05/12/08	C99-0289 WDC	Motion to Withdraw as Attorney for Petitioner (re: Brian Tsuchida)
05/13/08	C99-0289 WDC	Order Permitting Withdrawal of Counsel





<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
05/01/01	C01-252 WDC	Order (on Respondent's motion regarding 28 U.S.C § 2261)
12/28/01	72009-6 WSSC	Personal Restraint Petition [Second]; Opening Brief in Support of Personal Restraint Petition
01/02/02	C01-252 WDC	Petition for Writ of Habeas Corpus; Memorandum in Support of Petition for Writ of Habeas Corpus; Declaration of John A. Strait
03/04/02	C01-252 WDC	Respondent's Answer, Memorandum of Authorities and Motion to Strike
04/04/02	72009-6 WSSC	Response to Personal Restraint Petition; Motion to Strike Petitioner's Personal Restraint Petition
04/30/02	C01-252 WDC	Petitioner's Memorandum Regarding Procedural Defenses Only
05/01/02	72009-6 WSSC	Petitioner's Opposition to Motion to Strike Personal Restraint Petition
05/06/02	C01-252 WDC	Motion to Expand the Record; Opposition to State's Motion to Strike
05/15/02	C01-252 WDC	Response to Motion to Expand the Record and Reply to Opposition to State's Motion to Strike
06/25/02	C01-252 WDC	Reply to Petitioner's Memorandum Regarding Procedural Defenses
09/11/02	C01-252 WDC	Order Staying Petition (the petition for writ of habeas corpus is stayed until further order of the Court. Counsel shall notify the court within 24 hours of any order issued by the Washington State Supreme Court which addresses Petitioner's personal restraint petition)
09/11/03	72009-6 WSSC	Opinion granting State's motion to strike Petitioner's Second Personal Restraint Petition. Chief Justice Alexander authored the opinion for the Court, holding that the petition is a mixed petition, containing both claims that are time-barred under RCW 10.73.090 and also claims that may fall within one of the exceptions to the time bar rule, RCW 10.73.100. The petition is dismissed. <i>State v. Stenson</i> , 150 Wn.2d 207, 76 P.3d 241 (2003).
10/06/03	72009-6 WSSC	Certificate of Finality
10/13/03	74593-5 WSSC	Personal Restraint Petition [Third]
11/18/03	C01-252 WDC	Order Granting Motion to Lift Stay, and to Proceed with Habeas Corpus Proceedings
11/24/03	74593-5 WSSC	Response to Personal Restraint Petition
11/24/03	72009-6 WSSC	Supplemental Judgment
04/27/04	C01-252 WDC	Order Granting Petitioner's Motion to Take Judicial Notice (re: <i>State v. Ridgeway</i> court documents)
11/24/04	74593-5 WSSC	Opinion denying third personal restraint petition as an abuse of the writ. Chief Justice Alexander authored the opinion for the Court. Justice Sanders dissented. <i>In re Stenson</i> , 153 Wn.2d 137, 102 P.3d 151 (2004).
01/07/05	74593-5 WSSC	Certificate of Finality
07/06/05	C01-252 WDC	Oral argument held

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
07/26/05	C01-252 WDC	Order (denying Petitioner's petition for writ of habeas corpus, granting Respondent's Motion to Strike; denying Petitioner's Motion to Expand the Record, denying Petitioner's Motion re: Evidentiary Hearing; and granting Petitioner's Motion to Take Judicial Notice); Judgment in a Civil Case
09/06/05	C01-252 WDC	Order Denying Petitioner's Motion for Reconsideration
09/14/05	C01-252 WDC	Notice of Appeal
09/15/05	C01-252 WDC	Notice of Appeal (re-file)
10/06/05	C01-252 WDC	Order (granting Petitioner's motion for certificate of appealability)
10/13/05	C01-252 WDC	Order (granting motion for stay of execution pending appeal; stay will terminate upon issuance of mandate)
02/06/06	05-99011 9CIR	Appellant/Petitioner's Opening Brief
04/14/06	05-99011 9CIR	Appellee/Respondent's Answering Brief
04/19/06	05-99011 9CIR	Order (Appellee/Respondent's motion to strike pages 21-27, 36-41 and 43 from Petitioner's Excerpts of Record is granted)
05/09/06	05-99011 9CIR	Petitioner/Appellant's Reply Brief
09/14/06	05-99011 9CIR	Oral argument held
09/24/07	05-99011 9 CIR	Opinion affirming the judgment of the district court. Chief Judge Schroeder authored the opinion, with Judges Kleinfeld and Bea concurring. <i>Stenson v. Lambert</i> , 504 F.3d 873 (9 Cir. 2007).
11/16/07	05-99011 9 CIR	Petition for Rehearing and Suggestion for Rehearing <i>En Banc</i>
12/03/07	05-99011 9 CIR	Brief of Amicus Curiae of the National Association of Criminal Defense Lawyers in Support of Mr. Darold J. Stenson's Petition for Rehearing
03/19/08	05-99011 9 CIR	Order (denying petition for rehearing)
04/03/08	05-99011 9 CIR	Mandate
04/04/08	05-99011 9 CIR	Emergency Motion to Recall the Mandate and for Stay of Mandate Pending Filing of Petition for Writ of Certiorari; Declaration of Sheryl Gordon McCloud
04/04/08	05-99011 9 CIR	Response to Stenson's Motion to Recall the Mandate
04/07/08	05-99011 9 CIR	Reply Re: Motion to Recall the Mandate and for Stay of Mandate Pending Filing of Petition for Writ of Certiorari; Declaration of Sheryl Gordon McCloud
04/09/08	05-99011 9 CIR	Order (granting motion to recall the mandate and staying the mandate pending the filing of petition for writ of certiorari)
05/21/08	07A928 USSC	Application to Justice Kennedy for Extension of Time to File Petition for Writ of Certiorari to the Ninth Circuit Court of Appeals
05/28/08	07A928 USSC	Order (granting extension of time until July 17, 2008 in which to file petition for writ of certiorari)



<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
06/23/08	05-99011 9 CIR	Motion for Extension of Stay of Mandate
07/01/08	05-99011 9 CIR	Order (Motion for Extension of Stay of Mandate is granted)
07/15/08	08-5328 USSC	Petition for Writ of Certiorari; Motion for Leave to Proceed In Forma Pauperis
<b>07/23/08</b>	<b>08-5328 USSC</b>	<b>Notation Letter (Petition for Writ received, brief in opposition due August 18, 2008)</b>
<b>07/24/08</b>	<b>08-5328 USSC</b>	<b>Supplemental Brief in Support of Petition for Writ of Certiorari</b>

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>	
<u>NAME:</u>		WOODS, Dwayne D.O.B.: 07-04-69 Race: Black	
<u>DATE OF CRIME:</u>		April 27, 1996	
<u>PLACE OF CRIME:</u>		Spokane County	
<u>BRIEF FACTS:</u>		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]. <i>State v. Woods</i> , Spokane County Superior Court Cause No. 96-1-01143-7.	
<u>DATE OF CONVICTION:</u>		June 20, 1997	
<u>SPECIAL SENTENCING:</u>		June 25, 1997	
<u>JUDGMENT AND: SENTENCE</u>		Spokane County Superior Court Cause No. 96-1-01143-7 July 23, 1997	
<u>TRIAL JUDGE:</u>		Honorable Michael E. Donohue	
<u>DEFENSE ATTYS:</u>		Richard Fasey James Sheehan James Ames Spokane, WA	
<u>PROSECUTING ATTYS:</u>		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	
<u>APPELLANT'S ATTYS:</u>		Lenell Rae Nussbaum Market Place Two 2001 Western Avenue Suite 200 Seattle, WA 98121-2163 (206) 728-0996	Joan M. Fisher Oliver W. Loewy Federal Public Defender - Id 317 West Sixth Street Suite 204 Moscow, ID 83843 (208) 883-0180
<u>PETITIONER'S ATTYS:</u>		(Personal Restraint Petition #71780-0) Lenell Rae Nussbaum Seattle, WA	Judith M. Mandel 524 Tacoma Ave. S. Tacoma, WA 98402-5416 (253) 272-5640



<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
05/02/02	71780-0 WSSC	Letter (copy of letter from Petitioner to Lenell Nussbaum regarding his wishes to waive certain portions of his case)
05/10/02	71780-0 WSSC	Petitioner's Motion for Depositions of Dr. John Anthony Brown, Donald Maclaren and William Morig
05/15/02	71780-0 WSSC	Letter (requesting that Lenell Nussbaum and Judith Mandel be withdrawn from the case and an order entered to proceed <i>pro se</i> )
05/28/02	71780-0 WSSC	Answer to Motion for Depositions
05/28/02	71780-0 WSSC	Response of Counsel to Petitioner's Letter Asking to Proceed <i>Pro Se</i>
06/03/02	71780-0 WSSC	Letter (the motion for depositions, motion for appointment of mitigation expert and Respondent's motion to compel will be considered at the same time as the personal restraint petition).
06/05/02	71780-0 WSSC	Petitioner's Reply Memorandum in Support of Motion for Depositions
07/02/02	71780-0 WSSC	Order (the matter is referred to the Spokane County Superior Court to hold a hearing and enter findings in answer to the following questions: (1) Is it Woods' desire to pursue a post-conviction relief by means of a personal restraint petition? (2) If the answer is yes, is it Woods' desire to proceed <i>pro se</i> in preparing and filing such a petition? (3) If Woods' answer to question two is no, or is a conditional or qualified yes, are his present counsel willing to abide by Woods' instructions regarding issues to be raised in such a petition? The court should make a thorough record and transmit by not later than August 15, 2002, its findings along with a complete record of the hearing)
07/11/02	71780-0 WSSC	Petitioner's Brief
07/15/02	71780-0 WSSC	Reference Hearing Report (with attached transcript of hearing)
07/22/02	71780-0 WSSC	Letter from Dwayne Woods dated July 17, 2002
08/12/02	71780-0 WSSC	Additional Reference Hearing Report
09/30/02	71780-0 WSSC	Respondent's Motion to Clarify Status of Petition and Response
10/14/02	71780-0 WSSC	Order (motion to clarify will not be decided at this time. The State should respond to all issues raised in the Personal Restraint Petition and Supplemental Personal Restraint Petition filed by Petitioner's counsel. At the time the Court considers the Personal Restraint Petition and Supplemental Personal Restraint Petition, it will resolve whether it will address issues other than those verified by the Petitioner.)
04/01/03	71780-0 WSSC	Petitioner's Ex Parte Motion for Appointment of Investigator [filed under seal]
04/02/03	71780-0 WSSC	Petitioner's Motion to Recall Mandate and Reopen Direct Appeal of Judgment and Sentence
04/07/03	71780-0 WSSC	Petitioner's Supplemental Brief in Support of Motion to Recall Mandate; Petitioner's Second Motion for Continuance of Due Date for Amended Petition and for the Supreme Court to Order Office of Public Defense to Authorize Sufficient Funds for Counsel
04/09/03	71780-0 WSSC	Petitioner's Ex Parte Motion for Authorization of Additional Investigative Hours [filed under seal]

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
04/14/03	71780-0 WSSC	Answer to Motion to Recall Mandate
04/16/03	71780-0 WSSC	Amended Personal Restraint Petition
04/21/03	71780-0 WSSC	Petitioner's Ex Parte Motion for Authorization of Additional Investigative Hours; Declaration of Lenell Nussbaum in Support of Ex Parte Motion for Additional Investigative Hours [filed under seal]
04/25/03	71780-0 WSSC	Petitioner's Reply Re: Motion to Recall Mandate
05/07/03	71780-0 WSSC	Verification of Petitioner on Amended Personal Restraint Petition
05/07/03	71780-0 WSSC	Respondent's Motion to Strike Unverified Claims in Amended Personal Restraint Petition; Motion to Strike Time Barred Claims
05/08/03	71780-0 WSSC	Order (Petitioner's motion to recall mandate and reopen direct appeal of judgment and sentence is denied); Order (Petitioner's second motion for continuance of due date for the Amended Petition and for the Supreme Court to order Office of Public Defense to authorize sufficient funds for counsel is denied)
05/09/03	71780-0 WSSC	Letter (Respondent's motions to strike will be passed to the merits and considered at the same time as the personal restraint petition)
05/23/03	71780-0 WSSC	Response to Personal Restraint Petition and Brief of Respondent; Response to Motion for Evidentiary Hearing
05/30/03	71780-0 WSSC	Petitioner's Response to Motions to Strike Time Barred and Unverified Claims
06/13/03	71780-0 WSSC	Response to Motion to Compel Depositions; Response to Motion to Strike
06/24/03	71780-0 WSSC	Reply Brief in Support of Amended Personal Restraint Petition; Petitioner's Second Motion for Deposition and for Protective Order
06/25/03	71780-0 WSSC	Response to State's Motion to Compel Discovery of DNA Testing
06/27/03	71780-0 WSSC	Letter (the following motions were recently filed and the Court has determined to pass them to the merits to be considered at the same time as the Personal Restraint Petition: Respondent's motion to compel deposition; Respondent's motion to strike hearsay and incompetent evidence; Respondent's motion to strike time barred claims and Petitioner's motion to strike)
07/16/03	71780-0 WSSC	Answer to Motions for Production and Inspection; Answer to Motion to Strike
07/23/03	71780-0 WSSC	Petitioner's Reply Memorandum in Support of Motion for Production and Inspection of Documents
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)
06/23/05	71780-0 WSSC	Respondent's Cost Bill filed
09/30/05	71780-0 WSSC	Order (denying motion for reconsideration)
10/03/05	71780-0 WSSC	Certificate of Finality

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
10/14/05	C05-319 EDC	Stipulated Emergency Order Staying Execution of Dwayne Anthony Woods; Emergency Order Staying Execution of Dwayne Anthony Woods
12/29/05	C05-319 EDC	Notice of Appearance of Oliver W. Loewy
04/12/06	C05-319 EDC	Order of Appointment and General Procedures (Attorney Lenell Nussbaum, Judith Mandel and Oliver Loewy's motions to withdraw as appointed counsel are granted; Susanne Elliott (as lead counsel) and David B. Zuckerman (as second lead counsel) are appointed as counsel)
04/13/06	C05-319 EDC	Amended Order (Oliver Loewy did not join the motion to withdraw in response to petitioner's request for reappointment of counsel and that his representation of petitioner is terminated)
07/21/06	C05-319 EDC	Petitioner's Writ of Habeas Corpus
08/14/06	C05-319 EDC	Petitioner's Supplement to Writ Petition Under 28 U.S.C. 2254 for Habeas Corpus
08/15/06	C05-319 EDC	Petitioner's Motion for Order to Show Cause Why Petitioner Remains in the Intensive Management Unit
08/24/06	C05-319 EDC	Respondent's Response to Motion for Order to Show Cause Why Petitioner Remains in the Intensive Management Unit
09/11/06	C05-319 EDC	State Court Record filed
09/13/06	C05-319 EDC	Petitioner's Reply Memorandum for Order to Show Cause Why Petitioner Remains in the Intensive Management Unit
09/19/06	71780-0 WSSC	Joint Motion to Unseal Documents
09/22/06	71780-0 WSSC	Order Granting Joint Motion to Unseal Documents
09/29/06	C05-319 EDC	Order (denying Motion for Order to Show Cause Why Petitioner Remains in IMU)
10/19/06	C05-319 EDC	Respondent's Supplemental Submission of State Court Record (Previously Sealed Documents)
10/31/06	C05-319 EDC	Respondent's Answer and Memorandum of Authorities
11/15/06	C05-319 EDC	Amended State Court Record Reference #00010320
01/10/07	C05-319 EDC	Second Amended State Court Record Index
01/11/07	C05-319 EDC	Revised Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus to Incorporate State Court Record Cites; Revised Supplement to Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus to Incorporate State Court Record Cites
07/31/07	C05-319 EDC	Order Re: Procedural Status of Claims and Request to Expand Record
10/01/07	C05-319 EDC	Petitioner's Brief Regarding Cause and Prejudice; Motion to Expand the Record and File Declarations Under Habeas Rule 7; Memorandum in Support of Motion.

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
11/09/07	C05-319 EDC	Response to Petitioner's Motion to Expand the Record; Response to Petitioner's Brief Re: Cause and Prejudice; Respondent's Motion for Determination of Whether Claim 4.4 is Procedurally Barred
12/06/07	C05-319 EDC	Petitioner's Response to Uttecht's Motion for Determination of Whether Claim 4.4 is Procedurally Barred
12/06/06	C05-319 EDC	Reply Re: Motion to Expand the Record and File Declarations Under Habeas Rule 7
12/06/07	C05-319 EDC	Petitioner's Reply Brief Regarding Cause and Prejudice
12/12/07	C05-319 EDC	Reply to Motion for Determination of Whether Claim 4.4 is Procedurally Barred
01/08/08	C05-319 EDC	Amended Order Re: Procedural Status of Claims and Request to Expand Record
01/08/08	C05-319 EDC	Order Granting Respondent's Motion For Determination of Whether Claim 4.4 is Procedurally Barred
04/03/08	C05-319 EDC	Order Re: Motion to Expand Record and File Declarations and Procedural Status of Claims 5.2 and 4.7
06/02/08	C05-319 EDC	Merits Memorandum
06/06/08	C05-319 EDC	Motion to Expand the Record with Documents Regarding Johnny Knight; Memorandum in Support of Motion to Expand Record with Documents Regarding Johnny Knight
06/11/08	C05-319 EDC	Response to Petitioner's Motion to Expand the Record with Documents re Johnny Knight
06/12/08	C05-319 EDC	Notice of Hearing re: Petitioner's Motion to Expand the Record with Documents Regarding Johnny Knight
<b>07/17/08</b>	<b>C05-319 EDC</b>	<b>Respondent's Merits Brief</b>
<b>07/30/08</b>	<b>C05-319 EDC</b>	<b>Notice of Hearing Re: Unopposed Motion for Extension of Time to File Reply Brief; Unopposed Motion for Extension of Time to File Reply Brief; Memorandum in Support of Unopposed Motion for an Extension of Time to File Reply Brief; Proposed Order Re: Unopposed Motion for Extension of Time to File Reply Brief</b>
<b>07/30/08</b>	<b>C05-319 EDC</b>	<b>Notice of Hearing Re: Motion to Expedite Unopposed Motion for Extension of Time to File Reply Brief; Motion to Expedite Unopposed Motion for Extension of Time to File Reply Brief; Memorandum in Support of Motion to Expedite Unopposed Motion for Extension of Time to File Reply Brief; Proposed Order Re: Motion to Expedite Unopposed Motion for Extension of Time to File Reply Brief</b>

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 to conceal the commission of a crime or to protect or conceal the identity of any person committing a crime; and (3) 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  
County-City Building  
930 Tacoma Avenue South  
Tacoma, WA 98402  
(253) 798-7400

APPELLANT'S ATTYS: **GREGORY LINK** **THOMAS KUMMEROW**  
**WA APPELLATE PROJECT** **WA APPELLATE PROJECT**  
**1511 THIRD AVENUE** **1511 THIRD AVENUE**  
**SUITE 701** **SUITE 701**  
**SEATTLE, WA 98101-3635** **SEATTLE, WA 98101-3635**  
**(206) 587-2711** **(206) 587-2711**

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

RESPONDENT'S ATTYS: **GERALD HORNE, PROSECUTING ATTORNEY**  
**JERRY COSTELLO, DEPUTY PROSECUTOR**  
**KATHLEEN PROCTOR, PROSECUTOR**



<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
10/17/02	73155-1 WSSC	Notice of Appeal
06/30/05	73155-1 WSSC	Appellant's Brief
03/31/06	73155-1 WSSC	Respondent's Brief
06/30/06	73155-1 WSSC	Appellant's Reply Brief
11/30/06	73155-1 WSSC	Oral argument held
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> , 168 P.3d 359, 2007 WL 2793120 (2007).
10/18/07	73155-1 WSSC	Motion for Reconsideration
11/06/07	73155-1 WSSC	Motion to Allow Late Filing of Cost Bill; Affidavit of Kathleen Proctor; Cost Bill
11/14/07	73155-1 WSSC	Order (Granting Motion to File Late Cost Bill)
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).
01/03/08	73155-1 WSSC	Mandate
01/11/08	73155-1 WSSC	Ruling (recalling Mandate as premature)
03/20/08	07-10069 USSC	Petition for Writ of Certiorari; Motion for Leave to Proceed In Forma Pauperis
05/23/08	07-10069 USSC	Respondent's Brief in Opposition
06/23/08	07-10069 USSC	Petition for Writ of Certiorari denied. <i>Yates v. Washington</i> , --- S. Ct. ---, 2008 WL 792054 (U.S. June 23, 2008)
07/07/08	73155-1 WSSC	Letter to Court from Yates requesting to have two new attorneys appointed.
<b>07/28/08</b>	<b>73155-1 WSSC</b>	<b>Motion for Appointment of Counsel</b>
<b>08/01/08</b>	<b>73155-1 WSSC</b>	<b>Mandate</b>