

CAPITAL PUNISHMENT CASE STATUS REPORT

February 6, 2009

CAPITAL LITIGATION TEAM:

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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

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	Jeannette Jameson Mill Creek, WA
	Michael Trickey (withdrew 05/01/96) Seattle, WA	Ronald D. Ness (withdrew 10/28/98) Port Orchard, WA
<u>PETITIONER'S ATTYS:</u>	(Federal Habeas Corpus, USDC WDC #C01-715C)	
	GILBERT LEVY ATTORNEY AT LAW 2001 WESTERN AVENUE MARKET PLACE TWO, SUITE 200 SEATTLE, WA 98121-2163 (206) 443-0670	SUZANNE LEE ELLIOTT ATTORNEY AT LAW 1300 HOGE BUILDING 705 SECOND AVENUE SEATTLE, WA 98104 (206) 623-0291

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>
11/03-4/03	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
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> , 530 F.3d 1031 (9th Cir. 2008).
07/18/08	04-35998 9 CIR	Petition for Rehearing En Banc
08/15/08	04-35998 9 CIR	Order (denying petition for rehearing en banc).
08/20/08	04-35998 9 CIR	Motion for Stay of Mandate
08/21/08	04-35998 9 CIR	Order (granting motion for stay of mandate).
11/08/08	08-7204 USSC	Petition for Writ of Certiorari; Petitioner's Motion to Proceed in Forma Pauperis.
12/11/08	08-7204 USSC	Respondent's Brief in Opposition
12/29/08	08-7204 USSC	Petitioner's Reply Brief in Support of Petition for Writ of Certiorari

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
01/21/09	08-7204 USSC	Order denying petition for writ of certiorari. <i>Brown v. Sinclair</i> , ___ S. Ct. ___, 2009 WL 129175.
01/28/09	04-35998 9 CIR	Mandate

<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) TODD MAYBROWN ALLEN HANSEN & MAYBROWN P.S. 600 UNIVERSITY ST., SUITE 3020 SEATTLE, WA 98101-4105 (206) 447-9681 JAMES LOBSENZ CARNEY BADLEY SPELLMAN 701 5TH AVENUE, SUITE 3600 SEATTLE, WA 98104-7010 (206) 622-8020
<u>RESPONDENT'S ATTYS:</u>		NORM MALENG, PROSECUTING ATTORNEY Timothy Bradshaw, Deputy (withdrew 01/24/03) DONALD RAZ, DEPUTY JAMES WHISMAN, DEPUTY RANDI J. AUSTELL, DEPUTY

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
05/30/08	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
06/10/08	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

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
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)
08/11/08	79761-7 WSSC	Respondent's Second Motion for Discovery Pursuant to RAP 16.26
09/03/08	79761-7 WSSC	Petitioner's Response in Opposition to Respondent's Second Discovery Motion
10/13/08	79761-7 WSSC	Response to Personal Restraint Petition
10/15/08	79761-7 WSSC	Respondent's Motion to Strike Declarations of Boerner and Robinson; Respondent's Motion to Strike Declaration of Torres
10/16/08	79761-7 WSSC	State's Authority for the Restraint of Petitioner Dayva Cross
10/23/08	79761-7 WSSC	Response in Opposition to Respondent's Motion to Strike Declarations of Boerner and Robinson; Response in Opposition to Respondent's Motion to Strike Torres Declaration
10/28/08	79761-7 WSSC	Reply to Response to Motion to Strike Declaration of Torres
11/10/08	79761-7 WSSC	Order (Respondent's Second Motion for Discovery is granted, Petitioner's Motion for Oral Argument is denied, Respondent's Motions to Strike Declarations of Boerner, Robinson, and Torres are denied)
01/07/09	79761-7 WSSC	Petitioner's Renewed Motion for Discovery Re: Lethal Injection Claims; Supplemental Declaration of Todd Maybrown
01/07/09	79761-7 WSSC	Joint Motion to Obtain Sealed Clerk's Papers and for an Extension of Time for the Filing of Petitioner's Reply Brief
01/09/09	79761-7 WSSC	Order Granting Motion for Extension of Time and Motion to Obtain Sealed Clerk's Papers
01/20/09	79761-7 WSSC	Department of Corrections' Response to Petitioner's Renewed Motion for Discovery
01/20/09	79761-7 WSSC	Petitioner's Motion to Lift Stay and Set Schedule Regarding Lethal Injection Claims
01/23/09	79761-7 WSSC	Reply in Support of Petitioner's Renewed Motion for Discovery Re: Lethal Injection Claims
01/23/09	79761-7 WSSC	Response to Motion to Lift Stay and Set Schedule Regarding Lethal Injection Claims
01/29/09	79761-7 WSSC	Petitioner's Motion to File Overlength Reply Brief
01/30/09	79761-7 WSSC	Respondent's Objection to Petitioner's Motion to File Overlength Reply Brief
01/30/09	79761-7 WSSC	Reply in Support of Petitioner's Motion to Lift Stay
02/04/09	79761-7 WSSC	Reply in Support of Petitioner's Motion for Leave to File Overlength Reply Brief

<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) ERIC BROMAN NIELSEN BROMAN & KOCH LLC 1908 E. MADISON STREET SEATTLE, WA 98122-2842
		Ronald D. Ness Port Orchard, WA DAVID KOCH NIELSEN BROMAN & KOCH LLC 1908 E. MADISON STREET SEATTLE, WA 98122-2842

<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>		GERALD HORNE, PROSECUTING ATTORNEY Barbara Corey-Boulet, Deputy John Hillman, Deputy JOHN MARTIN NEEB, DEPUTY KATHLEEN PROCTOR, DEPUTY
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
09/24/08	80209-2 WSSC	Motion to Extend Time to File Brief of Appellant
09/30/08	80209-2 WSSC	Order Granting Motion to Extend Time to File Brief of Appellant (brief due December 15, 2008).
01/08/09	80209-2 WSSC	Motion to Withdraw as Lead Counsel and Request to Appoint New Lead Counsel
01/15/09	80209-2 WSSC	Order (Motion to Withdraw as Lead Counsel is granted, Eric Nielsen appointed as new lead counsel)
01/15/09	80209-2 WSSC	Statement of Compliance with RCW 10.95.150

<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
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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
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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>
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; 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
05/29/08	C08-0053 WDC	Respondent's Submission of State Court Record Pursuant to CR 104(i)(1)
12/04/08	70233-1 WSSC	Joint Motion to Unseal Documents
12/05/08	70233-1 WSSC	Order Granting Joint Motion to Unseal Documents
12/16/08	70233-1 WSSC	Joint Motion to Re-Seal Document
12/18/08	70233-1 WSSC	Order Granting Joint Motion to Re-Seal Document
12/19/08	C08-0053 WDC	Answer and Memorandum of Authorities; Respondent's Supplemental Submission of State Court Record Pursuant to CR 104(i)(1)
01/13/09	C08-0053 WDC	Stipulated Motion Regarding Filing of Petitioner's Reply
01/14/09	C08-0053 WDC	Order Setting Date for Petitioner's Reply
02/02/09	C08-0053 WDC	Second Stipulated Motion Regarding Filing of Petitioner's Reply
02/03/09	C08-0053 WDC	Order Resetting Date for Petitioner's Reply (reply now due March 13, 2009)

<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) SCOTT ENGELHARD 320 MAYNARD BUILDING 119 FIRST AVENUE SOUTH SEATTLE, WA 98104 (206) 749-0117 Brian Tsuchida (withdrew on 5/13/08) Seattle, WA MEREDITH M. ROUNTREE 510 SOUTH CONGRESS AVENUE SUITE 308 AUSTIN, TX 78704 (512) 320-0334
<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
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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 (re: Claim A [dismissal of juror for cause]).
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
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
09/10/08	C99-0289 WDC	Notice of Substitution of Respondent
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).
10/03/08	C99-0289 WDC	Motion for Reconsideration
11/13/08	C99-0289 WDC	Order for Further Briefing
11/26/08	C99-0289 WDC	Response to Motion for Reconsideration
12/16/08	C99-0289 WDC	Reply Memorandum in Support of Motion for Reconsideration

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
<u>NAME:</u>	STENSON, Darold Ray aka Darold R. J. Stenson D.O.B. November 24, 1952 Race: White	
<u>DATE OF CRIME:</u>	March 25, 1993	
<u>PLACE OF CRIME:</u>	Clallam County	
<u>BRIEF FACTS:</u>	Darold Stenson was convicted of two counts of aggravated first degree murder for the shooting deaths of his wife, Denise Ann Stenson, and his business partner, Frank Clement Hoerner. The aggravating circumstances were (1) the murders were part of a common scheme or plan, and (2) the murders were committed to protect or conceal the identity of the perpetrator of a crime. <i>State v. Stenson</i> , Clallam County Superior Court Cause No. 93-1-00039-1.	
<u>DATE OF CONVICTION:</u>	August 11, 1994	
<u>SPECIAL SENTENCING:</u>	August 18, 1994	
<u>JUDGMENT AND: SENTENCE</u>	Clallam County Superior Court Cause No. 93-1-00039-1 August 19, 1994	
<u>TRIAL JUDGE:</u>	Honorable Kenneth D. Williams	
<u>DEFENSE ATTYS:</u>	Frederick D. Leatherman, Jr. Seattle, WA	Dave Neupert Port Angeles, WA
<u>PROSECUTING ATTYS:</u>	Deborah Snyder Kelly, Prosecuting Attorney David H. Bruneau, trial counsel and former Prosecuting Attorney Stephen Traylor, Deputy Prosecuting Attorney Clallam County Prosecutor's Office Clallam County Courthouse 223 East Fourth Street Port Angeles, WA 98362-3098 (360) 417-2301	
<u>APPELLANT'S ATTYS:</u>	(Direct Appeal, Washington Supreme Court #61965-4) James E. Lobsenz Seattle, WA	
<u>PETITIONER'S ATTYS:</u>	(Personal Restraint Petition, Washington Supreme Court #66565-6) Judith Mandel (1/29/01) Ronald D. Ness (1/29/01) Port Orchard, WA Port Orchard, WA	
	(Habeas Corpus Petition, USDC WDC Cause #C01-252P) SHERYL GORDON MCCLOUD ATTORNEY AT LAW 710 CHERRY STREET SEATTLE, WA 98104 (206) 224-8777	ROBERT H. GOMBINER FEDERAL PUBLIC DEFENDERS OFFICE 1601 FIFTH AVENUE, SUITE 700 SEATTLE, WA 98101-1605 (206) 553-1100

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
04/03/98	61965-4 WSSC	Death Warrant (setting execution for May 20, 1998)
04/07/98	66565-6 WSSC	Application for Stay of Execution Pursuant to RAP 16.24
04/08/98	66565-6 WSSC	Order (the application for stay of execution pursuant to RAP 16.24 is granted and further proceedings in trial court are stayed until further order of this Court)
01/04/01	66565-6 WSSC	Opinion denying personal restraint petition. Chief Justice Guy authored the opinion. Justice Sanders dissented. <i>In re Stenson</i> , 142 Wn.2d 710, 16 P.3d 1 (2001)
01/29/01	66565-6 WSSC	Certificate of Finality; Order Dissolving Stay of Execution
02/21/01	01-096M WDC	Order Appointing Public Defender (Robert H. Gombiner of Federal Public Defender's Office)
03/06/01	C01-252 WDC	Order Granting Motion for Stay of Execution
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

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
11/24/03	74593-5 WSSC	Response to Personal Restraint Petition
11/24/03	72009-6 WSSC	Supplemental Judgment
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
07/26/05	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)
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).
03/19/08	05-99011 9 CIR	Order (denying petition for rehearing)
04/03/08	05-99011 9 CIR	Mandate
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)
07/15/08	08-5328 USSC	Petition for Writ of Certiorari; Motion for Leave to Proceed In Forma Pauperis
07/24/08	08-5328 USSC	Supplemental Brief in Support of Petition for Writ of Certiorari
08/18/08	08-5328 USSC	Respondent's Brief in Opposition
08/22/08	93-1-00039-1	Petitioner's Motion for DNA Testing
08/27/08	08-5328 USSC	Petitioner's Reply Brief

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
09/05/08	08-2-02080-8	Summons by Personal Service; Complaint for Declaratory Judgment and Injunctive Relief (re: method of execution)
09/19/08	08-2-02080-8	Plaintiff's Motion for Change of Judge; Affidavit of Prejudice in Support of Plaintiff's Motion for Change of Judge
09/24/08	08-2-02080-8	Defendants' Motion to Dismiss or Transfer Case to the Supreme Court and Memorandum in Support Thereof
09/25/08	08-2-02080-8	Notice of Reassignment and Status Conference (Judge Wickham assigned)
09/26/08	08-2-02080-8	Plaintiff's First Interrogatories to Defendants; Plaintiff's First Requests for Production of Documents to Defendants; Plaintiff's Request for Inspection for Entry Upon Land for Inspection
09/30/08	82197-6 WSSC	Petition and Memorandum in Support of Original Action Against State Officers for Writ of Prohibition and/or Mandamus; Affidavit in Support of Original Action Against State Officers for Writ of Prohibition and/or Mandamus; Motion to Proceed <i>In Forma Pauperis</i> (re: application of RCW 10.95.160(2)).
10/02/08	82197-6 WSSC	Order Granting Motion to Proceed <i>In Forma Pauperis</i>
10/06/08	93-1-00039-1	Motion for Order Requiring Preservation of Evidence; Motion for Leave to Conduct Discovery; Motion for Independent DNA Testing of Evidence; Petitioner's First Request for Admissions
10/06/08	08-5328 USSC	Order denying petition for writ of certiorari. <i>Stenson v. Uttecht</i> , 129 S. Ct. 247 (2008).
10/07/08	82197-6 WSSC	Answer to Petition Against State Officers for Writ of Prohibition and/or Mandamus
10/07/08	05-99011 9 CIR	Motion to Stay Mandate
10/08/08	05-99011 9 CIR	Response to Stenson's Motion to Further Stay the Mandate
10/15/08	93-1-00039-1	Motion for Leave to Conduct Discovery Re Handling of Evidence in Possession of Clallam County Sheriff's Department
10/16/08	82197-6 WSSC	Reply to Petition Against State Officers for Writ of Prohibition and/or Mandamus
10/17/08	05-99011 9 CIR	Order (denying motion to stay issuance of mandate); Mandate
10/17/08	93-1-00039-1	Response to Motion to Conduct DNA Testing; Response to Motion to Conduct Discovery; Response to Motion to Request Discovery Re: Evidence; Response to Motion to Preserve Evidence
10/20/08	08-2-02080-8	Plaintiff's Responding Brief in Opposition to Defendants' Motion to Dismiss or Transfer; Declaration of Dr. Souter; Declaration of Sherilyn Peterson; Compendium of Non-Washington cases Submitted in Support of Response Brief
10/20/08	93-1-00039-1	Motion to Conduct Investigation
10/21/08	82197-6 WSSC	Petitioner's Motion for Interim Relief; Declaration of Robert H. Gombiner
10/22/08	82197-6 WSSC	Response to Motion for Stay of Execution

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
10/23/08	08-2-02080-8	Motion to Strike Declarations of Sherilyn Peterson and Dr. Michael Souter and Articles Submitted in Support of Stenson's Response to Defendants' Motion to Dismiss
10/24/08	08-2-02080-8	Reply to Response to Defendants' Motion to Dismiss or Transfer Case to the Supreme Court
10/24/08	93-1-00039-1	Minute Order Granting Motion for Protection Order on Evidence and Evidence Preservation
10/29/08	82332-4 WSSC	Personal Restraint Petition [Fourth]; Opening Brief in Support of Personal Restraint Petition; Motion to Proceed in Forma Pauperis
10/29/08	82332-4 WSSC	Response to Motion for Order Enjoining Execution
10/29/08	08-2-02080-8	First Amended and Supplemental Complaint for Declaratory Judgment and Injunctive Relief; Plaintiff's Responding Brief to Defendants' Motion to Strike; Plaintiff's Sur-Reply to Defendants' Reply in Support of Motion to Dismiss
10/30/08	82332-4 WSSC	RAP 16.9 Response to Personal Restraint Petition
10/30/08	08-2-02080-8	Reply to Plaintiff's Responding Brief to Defendants' Motion to Strike; Defendants' Supplemental Memorandum in Support of Defendants' Motion to Dismiss or Transfer Case to the Supreme Court
10/31/08	82332-4 WSSC	Declaration of Darold R.J. Stenson Verifying Personal Restraint Petition
11/03/08	82332-4 WSSC	Memorandum in Support of Motion for Stay of Execution
11/03/08	82332-4 WSSC	Response to Washington State Bar Association's Motion to File Amicus Brief
11/03/08	08-2-02080-8	Plaintiff's Supplemental Filing in Opposition to Defendants' Motion to Dismiss or Transfer
11/04/08	82332-4 WSSC	Motion of Washington State Bar Association to File Amicus Brief; Brief of the Washington State Bar Association as Amicus Curiae
11/05/08	82332-4 WSSC	Letter from Pam Loginsky responding to Motion of Washington State Bar Association to File Amicus Brief
11/05/08	82332-4 WSSC	Motion of the ACLU and ACLU of Washington for Leave to File Amicus Brief and an Overlength Brief; Amici Curiae Brief of the American Civil Liberties Union and the American Civil Liberties Union of Washington
11/05/08	82332-4 WSSC	Letter from Pam Loginsky responding to Motion of the ACLU and ACLU of Washington for Leave to File Amicus Brief and an Overlength Brief
11/05/08	82332-4 WSSC	Motion to Permit Filing of Amicus Brief of Murder Victims' Families of Reconciliation
11/05/08	82332-4 WSSC	Letter from Pam Loginsky responding to Motion to Permit Filing of Amicus Brief of Murder Victims' Families of Reconciliation
11/05/08	C01-252 WDC	Motion for Permission to File Document Under Seal
11/06/08	C01-252 WDC	Response to Motion for Permission to File Document Under Seal
11/06/08	C01-252 WDC	Motion to Withdraw Ex Parte Declaration and Motion for Permission to File Said Declaration Under Seal

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
11/07/08	82197-6 WSSC	Order (denying Petition Against State Officers for Writ of Prohibition and/or Mandamus; denying motions for oral argument and for stay of execution)
11/07/08	82332-4 WSSC	Order Granting Motion to File Amicus Brief and Motion to File Overlength Brief
11/07/08	82332-4 WSSC	Amici Curiae Brief of the American Civil Liberties Union and the American Civil Liberties Union of Washington
11/12/08	82332-4 WSSC	Response to Amici Curiae Briefs of the Washington State Bar Association, the American Civil Liberties Union and the American Civil Liberties Union of Washington and Murder Victims' Families for Reconciliation
11/13/08	08-2-02080-8	Plaintiff's Motion for Preliminary Injunction
11/13/08	08-2-02080-8	Defendants' Motion for Summary Judgment and Memorandum in Support Thereof
11/13/08	08-2-02080-8	Defendants' Response to Motion for Preliminary Injunction
11/17/08	08-2-02080-8	Defendants' Supplemental Memorandum in Response to Plaintiff's Motion for Preliminary Injunction
11/19/08	82332-4 WSSC	Order Denying Review
11/19/08	08-2-02080-8	Plaintiff's Reply in Support of Plaintiff's Motion for Preliminary Injunction; Reply Declaration of Sherilyn Peterson; Supplemental Declaration of Dr. Michael J. Souter; Declaration of Diane M. Meyers
11/19/08	08-2-02080-8	Defendants' Supplemental Memorandum in Support of Defendants' Motion to Dismiss or Transfer Case to the Supreme Court
11/20/08	C08-5079 EDC	Complaint for Equitable and Injunctive Relief
11/21/08	C08-5079 EDC	Plaintiff Darold Stenson's Motion for Temporary Restraining Order; Declaration of Diane M. Meyers Peterson Regarding Efforts to Provide Notice of Motion for Temporary Restraining Order
11/21/08	C08-5079 EDC	Response to Motion for Temporary Restraining Order or Preliminary Injunction
11/21/08	82332-4 WSSC	Motion for Reconsideration
11/21/08	82438-0 WSSC	Notice of Discretionary Review
11/21/08	82489-4 WSSC	Notice of Appeal
11/21/08	82440-1 WSSC	Notice of Appeal
11/21/08	08-2-02080-8	Order Denying Plaintiff's Motion for Preliminary Injunction
11/21/08	08-2-02080-8	Order Denying in Part and Granting in Part Defendants' Motion to Dismiss; Order Granting in Part and Denying in Part Defendants' Motion to Strike
11/24/08	82438-0 WSSC	Emergency Motion for Discretionary Review of Denial of Preliminary Injunction; Statement of Grounds for Direct Review

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
11/24/08	82438-0 WSSC	Answer to Emergency Motion for Discretionary Review of Denial of Preliminary Injunction
11/24/08	08-2-02080-8	Defendants' Answer to Plaintiff's First Amended and Supplemental Complaint for Declaratory Judgment and Injunctive Relief
11/24/08	C08-5079 EDC	Supplemental Response to Motion for Temporary Restraining Order; Declaration of Devon Schrum
11/24/08	C08-5079 EDC	Plaintiff Darold Stenson's Reply in Support of Motion for Temporary Restraining Order; Plaintiff Darold Stenson's Motion for Preliminary Injunction
11/25/08	C08-5079 EDC	Order Granting Stay
11/25/08	C08-5079 EDC	Defendants' Notice of Appeal - Interlocutory Order Appeal
11/25/08	C08-5079 EDC	Defendants' Amended Notice of Appeal of Preliminary Injunction or, in the Alternative, Appeal of Interlocutory Order
11/25/08	08-35974 9CIR	Emergency Motion Under Circuit Rule 27-3 to Vacate Stay of Execution; Civil Appeals Docketing Statement; Representation Statement; Petition for Permission to Appeal
11/26/08	C08-5079 EDC	Summons for Eldon Vail, Cheryl Strange, Department of Corrections, & Steve Sinclair)
11/26/08	82332-4 WSSC	Response to Petitioner's Motion for Reconsideration
11/26/08	82332-4 WSSC	RAP 8.3(b) Motion to Vacate Stay of Execution and Motion for Accelerated Review of RAP 8.3(b) Motion to Vacate Stay of Execution
11/26/08	82440-1 WSSC	Response in Opposition to State's Motion for Accelerated Review; Supplemental Response in Opposition to State's Motion for Accelerated Review; Second Supplement to Response in Opposition to State's Motion for Accelerated Review
11/26/08	82440-1 WSSC	Reply to Response in Opposition to State's Motion for Accelerated Review
11/26/08	08-35974 9CIR	Order (motion to vacate the district court's stay of execution is denied as moot)
11/26/08	08A471 USSC	Application to Vacate Stay of Execution
11/30/08	08A471 USSC	Opposition to Application to Vacate Stay of Execution
12/01/08	82332-4 WSSC	Order (consideration of motion for reconsideration is deferred pending further order of the Court)
12/01/08	82438-0 WSSC	Order (consideration of emergency motion is deferred pending further order of the Court)
12/01/08	82440-1 WSSC	Motion to Dismiss Review or, in the Alternative to Grant Leave Pursuant to RAP 7.2(e) to Trial Judge to Formally Enter Order
12/01/08	82440-1 WSSC	Supplemental Reply to Stenson's Supplemental Response to State's Motion for Accelerated Review of its RAP 18.3(b) Motion to Vacate the State of Execution
12/01/08	82440-1 WSSC	Opposition to Motion to Dismiss Appeal and Opposition to Motion for Leave Pursuant to RAP 7.2(e) for Entry of Order Granting DNA Testing

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
12/01/08	82440-1 WSSC	Order (The Court, by unanimous vote, grants the State's motion for accelerated review, but by majority vote, denies the State's motion to vacate the stay of execution, without prejudice to the State to renew before the trial court its motion to vacate the stay of execution following the passage of 90 days from the date of this order. The Court unanimously grants Stenson's motion to dismiss his notice of appeal that was filed on November 21, 2008, which leaves the trial court with authority to formally enter a subsequent order)
12/01/08	08A471 USSC	Reply to Response to Application to Vacate Stay of Execution
12/01/08	93-1-00039-1	Memorandum of Authorities Regarding Entry of DNA Testing Order
12/02/08	08-2-02080-8	Defendants' Motion for Judge Wickham to Retain the Case
12/02/08	08-35974 9CIR	Time Schedule Order
12/03/08	C08-5079 EDC	Defendants' Answer to Plaintiff's Complaint for Equitable and Injunctive Relief
12/03/08	08A471 USSC	Order (application to vacate stay of execution is granted). <i>Vail v. Stenson</i> , 129 S. Ct. 537 (2008).
12/03/08	93-1-00039-1	Stipulation re Release of Evidence
12/03/08	93-1-00039-1	Order Granting Plaintiff's Motion for DNA Testing
12/04/08	93-1-00039-1	Notice of Direct Appeal
12/05/08	08-35974 9CIR	Defendants-Appellants' Motion to Dismiss Appeal as Moot
12/09/08	82489-4 WSSC	Order (Parties are to serve and file written comments as to whether or not the notice of appeal should be redesignated a notice for discretionary review. The comments should be served and filed with this court by not later than December 19, 2008. The State of Washington is requested to provide this Court with a copy of the trial court motion upon which the order of review is sought is based.)
12/09/08	82440-1 WSSC	Dissent to Order (authored by Justice Madsen, joined by Justice J. Johnson)
12/10/08	08-2-02080-8	Plaintiff's Response to Defendants' Motion for Judge Wickham to Retain the Case
12/11/08	08-2-02080-8	Defendants' Reply to Plaintiff's Response to Defendants' Motion for Judge Wickham to Retain the Case
12/10/08	08-35974	Order (motion to dismiss appeal as moot is granted)
12/19/08	82489-4 WSSC	Statement of Grounds for Direct Review, Statement of Reviewability as a Matter of Right and Alternative Motion for Discretionary Review
12/19/08	93-1-00039-1	Washington State Patrol's Response to Court's December 3, 2008 Order Granting Petitioner's Motion for DNA Testing; Declaration of Dr. Gary Shutler
12/22/08	82489-4 WSSC	Petitioner's Memorandum Re: Appealability of Order Granting DNA Testing
12/22/08	82489-4 WSSC	Order (redesignating notice of appeal as notice for discretionary review)
01/05/09	93-1-00039-1	Memorandum re Propriety of Further DNA Testing
01/12/09	82197-6 WSSC	Certificate of Finality

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
01/12/09	08-2-02080-8	Plaintiff's Responding Brief in Opposition to Defendants' Motion for Summary Judgment; Third Declaration of Dr. Michael J. Souter; Compendium of Non-Washington Cases to Plaintiff's Opposition to Defendants' Motion for Summary Judgment
01/14/09	82332-4 WSSC	Petitioner's Additional Authorities
01/15/09	93-1-00039-1	Supplemental Memorandum re the Propriety of Further DNA Testing
01/16/09	93-1-00039-1	Response to January 15, 2009 Motions
01/16/09	08-2-02080-8	Defendants' Reply to Plaintiff's Response to Defendants' Motion for Summary Judgment
01/20/09	08-2-02080-8	Plaintiff's Motion to Compel Discovery Regarding the Lethal Injection Team; Declaration of Sherilyn Peterson in Support of Motion to Compel
01/22/09	08-2-02080-8	Defendants' Response to Plaintiff's Motion to Compel Discovery Regarding the Lethal Injection Team
01/22/09	93-1-00039-1	Further Order on DNA Testing
01/26/09	08-2-02080-8	Plaintiff's Reply in Support of Motion to Compel Discovery Regarding the Lethal Injection Team
01/30/09	82489-4 WSSC	RAP 2.3(b) Motion for Discretionary Review RAP 8.3 Motion for Stay of DNA Testing RAP 18.12 Motion for Accelerated Consideration; Statement of Grounds for Direct Review; Motion and Declaration for Permission to File Overlength Motion
02/02/09	82489-4 WSSC	Order (at this time no action will be taken on the Motion for Discretionary Review RAP 8.3 Motion for Stay of DNA Testing RAP 18.12 Motion for Accelerated Consideration)
02/02/09	93-1-00039-1	Order and Memorandum re Latent Prints Subject to DNA Testing
02/03/09	82489-4 WSSC	Statement of Additional Authorities
02/03/09	08-2-02080-8	Notice of Substitution of Parties (Ken Taylor for Marc Stern)

<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

DATE CAUSE ACTION

(Federal Habeas Corpus, USDC EDC #CV-05-0319-LRS)

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RESPONDENT'S ATTYS:

(Personal Restraint Petition #71780-0)
Steven Tucker, Prosecuting Attorney
Kevin Korsmo, Senior Deputy

(Federal Habeas Corpus, USDC EDC #CV-05-0319-LRS)
ROBERT M. MCKENNA, ATTORNEY GENERAL
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08/04/97	65585-5 WSSC	Notice of Appeal
03/22/00	65585-5 WSSC	Oral argument held
05/24/01	65585-5 WSSC	Opinion affirming conviction and death sentence. Chief Justice Alexander authored the opinion for the Court. Justice Sanders dissented. <i>State v. Woods</i> , 143 Wn.2d 561, 23 P.3d 1046 (2001)
06/01/01	65585-5 WSSC	Cost Bill (\$50,975.71 to AIDF & \$535.01 to Spokane County Prosecutor)
08/20/01	01-5921 USSC	Petition for Writ of Certiorari
10/09/01	01-5921 USSC	Petition for Writ of Certiorari denied. <i>Woods v. Washington</i> , 534 U.S. 964, 122 S.Ct. 374, 151 L. Ed. 2d 285 (2001)
10/15/01	65585-5 WSSC	Mandate issued
10/26/01	71780-0 WSSC	Letter (from Dwayne Anthony Woods requesting the appointment of Lenell Nussbaum as personal restraint counsel)
11/27/01	96-1-01143-7	Death Warrant (setting execution for December 12, 2001)
11/27/01	71780-0 WSSC	Application for Stay of Execution Pursuant to RAP 16.24
11/27/01	71780-0 WSSC	Notation Order (the application for stay of execution is granted)
01/07/02	71780-0 WSSC	Order (appointing Judith Mandel and Lenell Nussbaum as counsel)
04/12/02	71780-0 WSSC	Ex Parte Motion for Investigative Services and Declaration of Judith Mandel in Support of Motion for Investigative Services

<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	Petitioner's 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
07/17/08	C05-319 EDC	Respondent's Merits Brief
08/20/08	C05-319 EDC	Petitioner's Reply Merits Memorandum
08/21/08	C05-319 EDC	Order Denying Motion to Expand Record with Documents Re: Johnny Knight
09/10/08	C05-319 EDC	Respondent's Citation to Supplemental Authority
01/06/09	C05-319 EDC	Order Directing Petitioner's Letter be Furnished to all Counsel and Setting Status Conference
01/26/09	C05-319 EDC	Status Report
01/27/09	C05-319 EDC	Response to Status Report re Petitioner's Request for Voluntary Dismissal
02/05/09	C05-319 EDC	Order Denying Petition, Supplement, and Revised Petition for a Writ of Habeas Corpus
02/05/09	C05-319 EDC	Judgment in a Civil Case

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
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(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> , 161 Wn.2d 714, 168 P.3d 359 (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> , 128 S. Ct. 2964 (2008).
07/07/08	73155-1 WSSC	Letter to Court from Yates requesting to have two new attorneys appointed.
07/28/08	73155-1 WSSC	Motion for Appointment of Counsel
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
10/14/08	82101-1 WSSC	Order (Petitioner's request for new counsel is denied)
10/16/08	82101-1 WSSC	Motion and Affidavit for Order Authorizing Attorney Substitution

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
10/22/08	82101-1 WSSC	Order (Motion for Order Authorizing Attorney Substitution is granted. Jeff Ellis is appointed as co-counsel)
02/04/09	82101-1 WSSC	Petitioner's Motion to Extend Time for Filing Personal Restraint Petition and Opening Brief