

# CAPITAL PUNISHMENT CASE STATUS REPORT

October 10, 2008

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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<br>D.O.B. April 16, 1958<br>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:<br/>SENTENCE</u> |              | King County Superior Court<br>Cause No. 91-1-03233-1<br>January 28, 1994   |
| <u>TRIAL JUDGE:</u>               |              | Honorable Ricardo S. Martinez  |
| <u>DEFENSE ATTYS:</u>             |              | Terry L. Mulligan<br>Port Orchard, WA<br>Kern Cleven<br>Bellingham, WA<br><br>Lin-Marie Hupp<br>Kent, WA   |
| <u>PROSECUTING ATTYS:</u>         |              | Honorable Norm Maleng<br>King County Prosecutor<br>Alfred Matthews, Deputy<br>Theresa Fricke, Deputy<br>701 Fifth Avenue, Suite 4800<br>Seattle, WA 98104<br>(206) 296-9000  |
| <u>APPELLANT'S ATTYS:</u>         |              | (Personal Restraint Petition, WSSC #66686-5)<br>Gilbert Levy<br>Seattle, WA<br><br>Judith Mandel (withdrew 10/28/98)<br>Port Orchard, WA<br><br>Michael Trickey (withdrew 05/01/96)<br>Seattle, WA<br><br>Jeannette Jameson<br>Mill Creek, WA<br><br>Ronald D. Ness (withdrew 10/28/98)<br>Port Orchard, WA  |
| <u>PETITIONER'S ATTYS:</u>        |              | (Federal Habeas Corpus, USDC WDC #C01-715C)<br><b>GILBERT LEVY</b><br><b>ATTORNEY AT LAW</b><br><b>2001 WESTERN AVENUE</b><br><b>MARKET PLACE TWO, SUITE 200</b><br><b>SEATTLE, WA 98121-2163</b><br><b>(206) 443-0670</b><br><br><b>SUZANNE LEE ELLIOTT</b><br><b>ATTORNEY AT LAW</b><br><b>1300 HOGE BUILDING</b><br><b>705 SECOND AVENUE</b><br><b>SEATTLE, WA 98104</b><br><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> , 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  |

| <u>DATE</u> | <u>CAUSE</u>   | <u>ACTION</u>                                |
|-------------|----------------|--|
| 08/21/08    | 04-35998 9 CIR | Order (granting motion for stay of mandate). |

| <u>DATE</u>                   | <u>CAUSE</u> | <u>ACTION</u>  |
|-------------------------------|--------------|--|
| <u>NAME:</u>                  |              | CROSS, Dayva Michael<br>D.O.B.: September 19, 1959<br>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<br>Cause No. 99-1-02212-9<br>June 22, 2001  |
| <u>TRIAL JUDGE:</u>           |              | Honorable Joan DuBuque   |
| <u>DEFENSE ATTYS:</u>         |              | Mark Larranaga<br>Richard Warner<br>Seattle, WA  |
| <u>PROSECUTING ATTYS:</u>     |              | Norm Maleng, Prosecuting Attorney<br>Don Raz, Senior Deputy Prosecutor<br>Tim Bradshaw, Deputy Prosecutor<br>King County Courthouse<br>516 Third Avenue, Suite W554<br>Seattle, WA 98104-2362<br>(206) 296-9000  |
| <u>APPELLANT'S ATTYS:</u>     |              | (Direct Appeal, WSSC Cause #71267-1)<br>Todd Maybrown<br>Allen Hansen & Maybrown P.S.<br>600 University Street, Suite 3020<br>Seattle, WA 98101-4105<br>(206) 447-9681<br><br>Kathryn Ross<br>Jones, Ross, Besman & Connolly<br>828 Second Street, Suite D<br>Mukilteo, WA 98275-1601<br>(425) 348-7937  |
| <u>PETITIONER'S ATTYS:</u>    |              | (Personal Restraint Petition, Washington Supreme Court #79761-7)<br><b>TODD MAYBROWN</b><br><b>ALLEN HANSEN &amp; MAYBROWN P.S.</b><br><b>600 UNIVERSITY ST., SUITE 3020</b><br><b>SEATTLE, WA 98101-4105</b><br><b>(206) 447-9681</b><br><br><b>JAMES LOBSENZ</b><br><b>CARNEY BADLEY SPELLMAN</b><br><b>701 5<sup>TH</sup> AVENUE, SUITE 3600</b><br><b>SEATTLE, WA 98104-7010</b><br><b>(206) 622-8020</b>                        |
| <u>RESPONDENT'S ATTYS:</u>    |              | <b>NORM MALENG, PROSECUTING ATTORNEY</b><br>Timothy Bradshaw, Deputy (withdrew 01/24/03)<br><b>DONALD RAZ, DEPUTY</b><br><b>JAMES WHISMAN, DEPUTY</b><br><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) |
| 08/11/08        | 79761-7 WSSC        | Respondent's Second Motion for Discovery Pursuant to RAP 16.26; Motion for Extension of Time to File Response to Petition  |
| 08/18/08        | 79761-7 WSSC        | Order Granting Motion for Extension of Time  |
| 09/03/08        | 79761-7 WSSC        | Petitioner's Response in Opposition to Respondent's Second Discovery Motion  |
| <b>10/13/08</b> | <b>79761-7 WSSC</b> | <b>Response to Personal Restraint Petition</b>   |

| <u>DATE</u>                   | <u>CAUSE</u> | <u>ACTION</u>  |
|-------------------------------|--------------|--|
| <u>NAME:</u>                  |              | DAVIS, Cecil Emile<br>D.O.B.: September 1, 1959<br>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<br>May 15, 2007   |
| <u>JUDGMENT AND SENTENCE:</u> |              | Pierce County Superior Court<br>Cause No. 97-1-00432-4<br>February 23, 1998<br>May 18, 2007  |
| <u>TRIAL JUDGE:</u>           |              | Honorable Frederick W. Fleming   |
| <u>DEFENSE ATTYS:</u>         |              | Ronald Ness<br>John L. Cross<br>Port Orchard, WA<br><br>Julia Lindstrom<br>Lloyd Alton, Jr.<br>Tacoma, WA  |
| <u>PROSECUTING ATTYS:</u>     |              | Gerald Horne, Prosecuting Attorney<br>John W. Ladenburg (Former Prosecuting Attorney)<br>John M. Neeb, Deputy Prosecutor (Withdraw 01/26/00)<br>John Hillman, Deputy Prosecutor (Former Prosecuting Attorney)<br>Gerald T. Costello, Deputy Prosecutor<br>Pierce County Prosecutor's Office<br>County-City Building<br>930 Tacoma Avenue South, Room 946<br>Tacoma, WA 98402-2171  |
| <u>APPELLANT'S ATTYS:</u>     |              | (Direct Appeal, WSSC Cause #66537-1)<br>Judith Mandel<br>Port Orchard, WA<br><br>(Direct Appeal, WSSC Cause #80209-2)<br><b>ERIC BROMAN</b><br><b>NIELSEN BROMAN &amp; KOCH LLC</b><br><b>1908 E. MADISON STREET</b><br><b>SEATTLE, WA 98122-2842</b>  |
|                               |              | Ronald D. Ness<br>Port Orchard, WA<br><br><b>DAVID KOCH</b><br><b>NIELSEN BROMAN &amp; KOCH LLC</b><br><b>1908 E. MADISON STREET</b><br><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)<br>Gilbert Levy Catherine Ann Chaney  |
| <u>RESPONDENT'S ATTYS:</u> |              | <b>GERALD HORNE, PROSECUTING ATTORNEY</b><br>Barbara Corey-Boulet, Deputy<br>John Hillman, Deputy<br><b>JOHN MARTIN NEEB, DEPUTY</b><br><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   |
| 09/24/08                   | 80209-2 WSSC | <b>Motion to Extend Time to File Brief of Appellant</b>  |
| 9/24/08                    | 80209-2 WSSC | <b>Order Granting Motion to Extend Time to File Brief of Appellant (brief due December 15, 2008).</b>  |

| <u>DATE</u>   | <u>CAUSE</u>   | <u>ACTION</u> |  |  |   |   |                              |  |  |  |
|---|--|---------------|--|--|---|---|------------------------------|--|--|--|
| <u>NAME:</u>  | ELMORE, Clark Richard (aka James Elmore aka James Lee Dickey)<br>D.O.B.: November 17, 1951<br>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<br>Cause No. 95-1-00310-1<br>May 3, 1996   |               |  |  |   |   |                              |  |  |  |
| <u>TRIAL JUDGE:</u>   | Honorable David Nichols  |               |  |  |   |   |                              |  |  |  |
| <u>DEFENSE ATTYS:</u>   | John Komorowski<br>Douglas Hyldahl<br>Bellingham, WA   |               |  |  |   |   |                              |  |  |  |
| <u>PROSECUTING ATTYS:</u>   | David S. McEachran, Prosecuting Attorney<br>Whatcom County Prosecutor's Office<br>Whatcom County Courthouse<br>311 Grand Avenue<br>Bellingham, WA 98225<br>(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<br/>Seattle, WA</td> <td>Meredith Martin Rountree<br/>Austin, TX</td> </tr> <tr> <td>Rita Griffith<br/>Seattle, WA</td> <td>Charlotte Cassady (Withdrawn 03-06-98)<br/>Mobile, AL</td> </tr> <tr> <td colspan="2">Jon Ostlund (06/17/96)<br/>Bellingham, WA</td> </tr> </table>                              |               | (Direct Appeal, Washington Supreme Court #64085-8)               |  | Michael P. Iaria<br>Seattle, WA   | Meredith Martin Rountree<br>Austin, TX  | Rita Griffith<br>Seattle, WA | Charlotte Cassady (Withdrawn 03-06-98)<br>Mobile, AL | Jon Ostlund (06/17/96)<br>Bellingham, WA |  |
| (Direct Appeal, Washington Supreme Court #64085-8)  |  |               |  |  |   |   |                              |  |  |  |
| Michael P. Iaria<br>Seattle, WA   | Meredith Martin Rountree<br>Austin, TX   |               |  |  |   |   |                              |  |  |  |
| Rita Griffith<br>Seattle, WA  | Charlotte Cassady (Withdrawn 03-06-98)<br>Mobile, AL   |               |  |  |   |   |                              |  |  |  |
| Jon Ostlund (06/17/96)<br>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<br/>The Defender Association<br/>810 Third Avenue<br/>Suite 800<br/>Seattle, WA 98104-1655<br/>(206) 447-3900</td> <td>Meredith Martin Rountree<br/>510 South Congress Avenue<br/>Suite 308<br/>Austin, TX 78704-1739<br/>(512) 320-0334</td> </tr> </table>                                   |               | (Personal Restraint Petition, Washington Supreme Court #70233-1) |  | Jeffrey E. Ellis<br>The Defender Association<br>810 Third Avenue<br>Suite 800<br>Seattle, WA 98104-1655<br>(206) 447-3900 | Meredith Martin Rountree<br>510 South Congress Avenue<br>Suite 308<br>Austin, TX 78704-1739<br>(512) 320-0334 |                              |  |  |  |
| (Personal Restraint Petition, Washington Supreme Court #70233-1)  |  |               |  |  |   |   |                              |  |  |  |
| Jeffrey E. Ellis<br>The Defender Association<br>810 Third Avenue<br>Suite 800<br>Seattle, WA 98104-1655<br>(206) 447-3900 | Meredith Martin Rountree<br>510 South Congress Avenue<br>Suite 308<br>Austin, TX 78704-1739<br>(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  |
| 05/29/08        | C08-0053 WDC        | Respondent's Submission of State Court Record Pursuant to CR 104(i)(1)  |
| <b>10/14/08</b> | <b>C08-0053 WDC</b> | <b>Respondent's Motion for Extension of Time to File Answer to Amended Petition</b>   |
| <b>10/15/08</b> | <b>C08-0053 WDC</b> | <b>Order Granting Motion for Extension of Time to File Answer to Amended Petition (answer due December 19, 2008).</b>   |



| <u>DATE</u>                   | <u>CAUSE</u> | <u>ACTION</u>   |
|-------------------------------|--------------|---|
| <u>NAME:</u>                  |              | GENTRY, Jonathan Lee<br>D.O.B.: August 7, 1956<br>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<br>Cause No. 88-1-00395-3<br>July 22, 1991   |
| <u>TRIAL JUDGE:</u>           |              | Honorable Terence Hanley  |
| <u>DEFENSE ATTYS:</u>         |              | Frederick D. Leatherman, Jr.<br>Jeffery P. Robinson (trial)   |
| <u>PROSECUTING ATTYS:</u>     |              | Russell Hauge, Prosecuting Attorney<br>C. Danny Clem (former Prosecuting Attorney)<br>Irene K. Asai, Deputy Prosecuting Attorney<br>Brian T. Moran, Deputy Prosecuting Attorney   |
| <u>APPELLANT'S ATTYS:</u>     |              | (Direct Appeal, Washington Supreme Court #58415-0)<br>Michael P. Iaria<br>Seattle, WA<br>Frederick D. Leatherman, Jr.<br>Seattle, WA  |
| <u>PETITIONER'S ATTYS:</u>    |              | (Personal Restraint Petition, Washington Supreme Court #62677-4; Federal Habeas Corpus, USDC WDC #C99-0289L)<br><br><b>SCOTT ENGELHARD</b><br><b>320 MAYNARD BUILDING</b><br><b>119 FIRST AVENUE SOUTH</b><br><b>SEATTLE, WA 98104</b><br><b>(206) 749-0117</b><br><br>Brian Tsuchida (withdrew on 5/13/08)<br>Seattle, WA<br><br><b>MEREDITH M. ROUNTREE</b><br><b>510 SOUTH CONGRESS AVENUE</b><br><b>SUITE 308</b><br><b>AUSTIN, TX 78704</b><br><b>(512) 320-0334</b> |
| <u>RESPONDENT'S ATTYS:</u>    |              | (Personal Restraint Petition, Washington Supreme Court #62677-4)<br>Russell Hauge, Prosecuting Attorney<br>Randy Sutton, Deputy<br>Pamela B. Loginsky, Special Deputy<br>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 (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; Order Denying Petitioner's Motion for Evidentiary Hearing on Denial of Effective Assistance of Counsel Due to Failure to Investigate  |
| <b>09/10/08</b> | <b>C99-0289 WDC</b> | <b>Notice of Substitution of Respondent</b>   |
| <b>09/15/08</b> | <b>C99-0289 WDC</b> | <b>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>, __ F. Supp. 2d __, 2008 WL 4228377 (W.D. Wash. September 15, 2008).</b> |
| <b>09/24/08</b> | <b>C99-0289 WDC</b> | <b>Motion for Leave to File Overlength Brief and Extend Due Date for Filing</b>   |
| <b>09/26/08</b> | <b>C99-0289 WDC</b> | <b>Response to Petitioner's Motion for Leave to File Overlength Brief and Extend Due Date for Filing</b>  |
| <b>09/26/08</b> | <b>C99-0289 WDC</b> | <b>Order Granting Motion to File Overlength Brief and Extend Due Date for Filing</b>  |
| <b>10/03/08</b> | <b>C99-0289 WDC</b> | <b>Motion for Reconsideration</b>   |

DATE          CAUSE          ACTION

NAME:                                  STENSON, Darold Ray aka Darold R. J. Stenson  
D.O.B. November 24, 1952  
Race: White

DATE OF CRIME:                          March 25, 1993

PLACE OF CRIME:                          Clallam County

BRIEF FACTS:                                  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. *State v. Stenson*, Clallam County Superior Court Cause No. 93-1-00039-1.

DATE OF CONVICTION:                          August 11, 1994

SPECIAL SENTENCING:                          August 18, 1994

JUDGMENT AND:                                  Clallam County Superior Court  
SENTENCE    Cause No. 93-1-00039-1  
August 19, 1994

TRIAL JUDGE:    Honorable Kenneth D. Williams

DEFENSE ATTYS:                                  Frederick D. Leatherman, Jr.                                  Dave Neupert  
Seattle, WA    Port Angeles, WA

PROSECUTING ATTYS:                                  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

APPELLANT'S ATTYS:                                  (Direct Appeal, Washington Supreme Court #61965-4)  
James E. Lobsenz  
Seattle, WA

PETITIONER'S ATTYS:                                  (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                                  ROBERT H. GOMBINER**  
**ATTORNEY AT LAW    FEDERAL PUBLIC DEFENDERS OFFICE**  
**710 CHERRY STREET    1601 FIFTH AVENUE, SUITE 700**  
**SEATTLE, WA 98104    SEATTLE, WA 98101-1605**  
**(206) 224-8777    (206) 553-1100**

| <u>DATE</u> | <u>CAUSE</u> | <u>ACTION</u> |
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PETITIONER'S ATTYS (cont.): (Personal Restraint Petition, WSSC 72009-6)  
 Sheryl Gordon McCloud  
 Nancy Lynn Talner  
 PMB 200  
 6016 NE Bothell Way  
 Kenmore, WA 98028-9403  
 (425) 489-0569

RESPONDENT'S ATTYS: (Personal Restraint Petition #1 WSSC #66565-6)  
 (Personal Restraint Petition #2 WSSC #72009-6)  
 Deborah Snyder Kelly, Prosecuting Attorney  
 Christopher O. Shea, Former Prosecuting Attorney  
 Lauren Erickson, Deputy

(Habeas Corpus Petition, WDC Cause No. C01-252P)  
 (Federal Habeas Corpus, USDC EDC #CT98-5028-JLQ)  
**ROBERT M. MCKENNA, ATTORNEY GENERAL**  
**JOHN J. SAMSON, ASSISTANT ATTORNEY GENERAL**  
**DONNA H. MULLEN, ASSISTANT ATTORNEY GENERAL**  
**CORRECTIONS DIVISION**  
**P.O. BOX 40116**  
**OLYMPIA, WA 98504-0116**  
**(360) 586-1445**

| <u>DATE</u> | <u>CAUSE</u> | <u>ACTION</u> |
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| 08/22/94 | 61965-4 WSSC | Notice of Appeal   |
| 12/10/96 | 61965-4 WSSC | Oral argument held   |
| 07/24/97 | 61965-4 WSSC | Opinion affirming conviction and death sentence. Justice Guy authored the opinion for the Court. Justice Sanders filed a dissenting opinion. <i>State v. Stenson</i> , 132 Wn.2d 668, 940 P.2d 1239 (1997) |
| 03/09/98 | 97-7347 WSSC | Petition for Writ of Certiorari denied. <i>Stenson v. Washington</i> , 523 U.S. 1008, 118 S.Ct. 1193, 140 L. Ed. 2d 323 (1998)   |
| 03/16/98 | 61965-4 WSSC | Mandate issued   |
| 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  |

| <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   |
| 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  |

| <u>DATE</u>     | <u>CAUSE</u>        | <u>ACTION</u>   |
|-----------------|---------------------|---|
| 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   |
| 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   |
| 04/09/08        | 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  |
| 09/05/08        | 08-2-02080-8        | Summons by Personal Service; Complaint for Declaratory Judgment and Injunctive Relief (re: method of execution)   |
| <b>09/15/08</b> | <b>08-2-02080-8</b> | <b>Notice of Appearance (AAGs Olson &amp; Samson)</b>   |



| <u>DATE</u> | <u>CAUSE</u>   | <u>ACTION</u>   |
|-------------|----------------|---|
| 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> , __ S. Ct. __, 2008 WL 2785666 (U.S. October 6, 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  |

| <u>DATE</u>                  | <u>CAUSE</u> | <u>ACTION</u>   |   |
|------------------------------|--------------|---|---|
| <u>NAME:</u>                 |              | WOODS, Dwayne<br>D.O.B.: 07-04-69<br>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<br>Cause No. 96-1-01143-7<br>July 23, 1997  |   |
| <u>TRIAL JUDGE:</u>          |              | Honorable Michael E. Donohue  |   |
| <u>DEFENSE ATTYS:</u>        |              | Richard Fasey<br>James Sheehan<br>James Ames<br>Spokane, WA   |   |
| <u>PROSECUTING ATTYS:</u>    |              | Steven Tucker, Prosecuting Attorney<br>James R. Sweetser, prior counsel and former Prosecuting Attorney<br>John F. Driscoll, Senior Deputy Prosecutor<br>Spokane County Prosecutor's Office<br>Public Safety Building<br>West 1100 Mallon Avenue<br>Spokane, WA 99260<br>(509) 477-3662   |   |
| <u>APPELLANT'S ATTYS:</u>    |              | Lenell Rae Nussbaum<br>Market Place Two<br>2001 Western Avenue<br>Suite 200<br>Seattle, WA 98121-2163<br>(206) 728-0996   | Joan M. Fisher<br>Oliver W. Loewy<br>Federal Public Defender - Id<br>317 West Sixth Street<br>Suite 204<br>Moscow, ID 83843<br>(208) 883-0180 |
| <u>PETITIONER'S ATTYS:</u>   |              | (Personal Restraint Petition #71780-0)<br>Lenell Rae Nussbaum<br>Seattle, WA  | Judith M. Mandel<br>524 Tacoma Ave. S.<br>Tacoma, WA 98402-5416<br>(253) 272-5640   |

DATE            CAUSE            ACTION

(Federal Habeas Corpus, USDC EDC #CV-05-0319-LRS)  
**SUZANNE LEE ELLIOTT**                            **DAVID ZUCKERMAN**  
**ATTORNEY AT LAW**                                **ATTORNEY AT LAW**  
**1300 HOGE BUILDING**                            **1300 HOGE BUILDING**  
**705 SECOND AVENUE**                            **705 SECOND AVENUE**  
**SEATTLE, WA 98104**                            **SEATTLE, WA 98104**  
**(206) 623-0291**                                    **(206) 623-1595**

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**  
**JOHN J. SAMSON, ASSISTANT ATTORNEY GENERAL**  
**CORRECTIONS DIVISION**  
**P.O. BOX 40116**  
**OLYMPIA, WA 98504-0116**  
**(360) 586-1445**

|          |              |  |
|----------|--------------|--|
| 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  |
| <b>09/10/08</b> | <b>C05-319 EDC</b> | <b>Respondent's Citation to Supplemental Authority</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> , 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   |