CAPITAL PUNISHMENT CASE STATUS REPORT

September 11, 2017

|  |  |
| --- | --- |
| CAPITAL LITIGATION TEAM:  Timothy N. Lang, Division Chief  Paul D. Weisser, Senior Counsel  John J. Samson, Senior Counsel  Tina E. Bushaw, Paralegal | ROBERT W. FERGUSON  Attorney General  State of Washington  Corrections Division  P.O. Box 40116  Olympia, WA 98504-0116  (360) 586-1445 |

INTRODUCTION

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

INDEX

Page

CROSS, Dayva Michael 3

DAVIS, Cecil Emile 7

ELMORE, Clark Richard 10

GENTRY, Jonathan Lee 14

GREGORY, Allen Eugene 19

SCHERF, Byron Eugene 22

SCHIERMAN, Conner Michael 25

YATES, Robert Lee, Jr. 27

KEY TO COURT ABBREVIATIONS

WSSC Washington State Supreme Court

EDC United States District Court for the Eastern District of Washington

WDC United States District Court for the Western District of Washington

9CIR United States Court of Appeals for the Ninth Circuit

USSC United States Supreme Court

NAME: CROSS, Dayva Michael

D.O.B.: September 19, 1959

Race: Caucasian

DATE OF CRIME: March 6, 1999

PLACE OF CRIME: King County

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

DATE OF GUILTY PLEA: October 23, 2000

SPECIAL SENTENCING: May 7, 2001

JUDGMENT AND King County Superior Court

SENTENCE: Cause No. 99-1-02212-9

June 22, 2001

TRIAL JUDGE: Honorable Joan DuBuque

DEFENSE ATTYS: Mark Larranaga

Richard Warner

Seattle, WA

PROSECUTING ATTYS: Norm Maleng, Prosecuting Attorney

Don Raz, Senior Deputy Prosecutor

Tim Bradshaw, Deputy Prosecutor

King County Courthouse

516 Third Avenue, Suite W554

Seattle, WA 98104-2362

(206) 296-9000

APPELLANT'S ATTYS: (Direct Appeal, WSSC Cause #71267-1)

Todd Maybrown Kathryn Ross

Seattle, WA Mukilteo, WA

pETITIONER’S ATTYS: (Personal Restraint Petition, WSSC Cause #79761-7; USSC #14-7683)

Todd Maybrown JAMES LOBSENZ

Seattle, WA Seattle, WA 98104

(Federal Habeas Corpus, USDC WDC #C14-1092)

**TODD MAYBROWN PETER OFFENBECHER**

**ALLEN HANSEN & MAYBROWN SKELLENGER BENDER, PS**

**600 UNIVERSITY ST., SUITE 3020 1301 5TH AVE, SUITE 3401**

**SEATTLE, WA 98101-4105 SEATTLE, WA 98101-2605**

**(206) 447-9681 (206) 623-6501**

RESPONDENT'S ATTYS: (Direct Appeal, WSSC Cause #71267-1)

(Personal Restraint Petition, WSSC Cause #79761-7)

Daniel T. Satterberg, Prosecuting Attorney

Timothy Bradshaw, Deputy (Withdrew 01/24/03)

Donald Raz, Deputy

James Whisman, Deputy

Randi J. Austell, Deputy

(Personal Restraint Petition, USSC #14-7683)

JAMES M. WHISMAN, SR. DEPUTY PROSECUTING ATTORNEY

Seattle, WA 98101

(Federal Habeas Corpus, USDC WDC #C14-1092)

**ROBERT W. FERGUSON, ATTORNEY GENERAL**

**JOHN J. SAMSON, SENIOR COUNSEL**

**CORRECTIONS DIVISION**

**PO BOX 40116**

**OLYMPIA, WA 98504-0116**

**(360) 586-1445**

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. *State v. Cross*, 156 Wn.2d 580, 132 P.3d 80 (2006).

11/06/06 06-6333 USSC Petition for Writ of Certiorari denied. *Cross v. Washington*, 549 U.S. 1022, 127 S. Ct. 559, 166 L. Ed. 2d 415 (2006).

11/30/06 71267-1 WSSC Mandate

12/19/06 71267-1 WSSC Amended Mandate

01/30/07 99-1-02212-9 Death Warrant (setting execution for February 27, 2007)

01/31/07 79761-7 WSSC Application for Stay of Execution

02/02/07 79761-7 WSSC Order Granting Stay of Execution and Appointing Counsel

09/06/07 79761-7 WSSC Order (Petitioner’s motion for appointment of Professors Boerner and Denno is denied. Motion for appointment of investigator Sanderson and Dr. Souter is granted. Motion to file under seal denied.)

10/24/07 79761-7 WSSC Placeholder Petition

11/16/07 79761-7 WSSC Order (Respondent's motion to reconsider is denied. The motion to contact jurors is granted as to both parties, subject to the requirements of RPC 3.5(c). The parties are also directed to specifically inform jurors that they may, but are not required, to speak with representatives of either or both the petitioner and the respondents, and may end the interviews at any time. The remaining motions are denied. All further proceedings related to discovery relative to alleged juror misconduct shall be heard by King County Superior Court Judge Joan E. DuBuque, except for any Petitioner requests for additional funding, which shall be considered by this Court)

01/29/08 79761-7 WSSC Personal Restraint Petition; Brief in Support of Personal Restraint Petition; Declarations of Maria Ferndanda Torres, Jonathan L. Grindlinger, MD, Mark Larranaga, Todd Maybrown, Jeffrey Ellis, David Boerner, Dr. Robert Thompson, James E. Lobsenz, Jeffrey Robinson, Richard Warner.

06/25/09 79761-7 WSSC Oral argument held

07/08/09 79761-7 WSSC Order (the Court denies relief based on the *Alford* plea issues presented. The Court's reasoning will be set forth in its opinion on the merits of the Petitioner's Personal Restraint Petition to be released in due course*.*)

09/26/13 79761-7 WSSC Opinion (holding that a capital sentence can be predicated on an *Alford* plea, therefore that portion of the personal restraint petition is denied. The remaining issues will be disposed of by separate opinion.) Justice Pro Tem Chambers authored the opinion for the unanimous court. *In re Cross*, 178 Wn.2d 519, 309 P.3d 1186 (2013).

06/26/14 79761-7 WSSC Opinion denying personal restraint petition. Justice Wiggins authored the opinion for the Court. Justice Sanders dissented. *In re Cross*, 180 Wn.2d 660, 327 P.3d 660 (2014)

07/15/14 79761-7 WSSC Petitioner's Motion for Reconsideration

07/15/14 C14-1092 WDC Ex Parte Motion to Appoint Counsel in an Anticipated Habeas Corpus Proceeding

07/22/14 C14-1092 WDC Order Granting Ex Parte Motion to Appoint Counsel

10/06/14 79761-7 WSSC Order denying motion for reconsideration

10/07/14 79761-7 WSSC Certificate of Finality

10/14/14 C14-1092 WDC Order Granting Stay of Execution

03/30/15 14-7683 USSC Petition for Writ of Certiorari denied. *Cross v. Washington*, 135 S. Ct. 1701 (2015).

05/29/15 C14-1092 WDC First Amended Petition for Writ of Habeas Corpus

07/13/15 C14-1092 WDC Second Amended Petition for Writ of Habeas Corpus

10/29/15 C14-1092 WDC Answer to Second Amended Habeas Corpus Petition

11/25/15 C14-1092 WDC Notice of Filing Respondent’s Submission of State Court Record Pursuant to CR 104(i)(1)

11/30/15 C14-1092 WDC State Court Record (filed)

04/18/16 C14-1092 WDC Order Denying Petitioner’s Motion for Stay of Proceedings

06/03/16 C14-1092 WDC Order Denying Petitioner’s Motion for Direct Response to Claims and Set New Schedule

06/17/16 C14-1092 WDC Petitioner’s Reply in Support of Second Amended Habeas Corpus Petition; Declaration of Erin Newton

06/25/16 C14-1092 WDC Respondent’s Notice of Filing Supplemental Submission of State Court Record in Paper of Physical Form with the Clerk’s Office

06/29/16 C14-1092 WDC Respondent’s Supplemental Submission of State Court Record

08/8/16 C14-1092 WDC Joint Status Report

08/16/16 C14-1092 WDC Status Conference Held

08/19/16 C14-1092 WDC Order setting the following deadlines; (1) Mr. Cross's motion for discovery, expansion of the record, and an evidentiary hearing is due no later than 9/30/2016; (2) Mr. Holbrook's response is due no later than 10/31/2016; and (3) Mr. Cross's reply is due no later than 11/14/2016. Order requiring Respondent to produce transcripts of the state court proceedings at issue for September 8, 2000, February 12, 2001, and March 13, 19, and 20, 2001, and the court reporters original notes underlying the transcripts. If for any reason, Respondent is unable to comply with this order within 30 days, the court ORDERS counsel for Respondent to immediately notify the court and file a declaration stating his reasons for noncompliance.

08/26/16 C14-1092 WDC Respondent’s Submission of State Trial Judge Reports

08/29/16 C14-1092 WDC Counsel for Respondent’s Declaration re: Status of Submission of Transcripts and Court Reporter Notes

11/03/16 C14-1092 WDC Joint Motion to Continue Deadlines

11/07/16 C14-1092 WDC Order Granting Joint Motion to Continue Deadlines

12/08/16 C14-1092 WDC Joint Motion to Continue Deadlines

12/09/16 C14-1092 WDC Order Granting Joint Motion to Continue Deadlines

03/13/17 C14-1092 WDC Joint Motion to Continue Deadlines

03/17/17 C14-1092 WDC Notice of Filing Respondent’s Submission of Court Reporter Notes; Notice of Filing of Declaration of Kevin Moll

03/17/17 C14-1092 WDC Order Granting Joint Motion to Continue Deadlines

03/20/17 C14-1092 WDC Notice of Filing Supplemental Submission of State Court Records Trial Transcripts

05/17/17 C14-1092 WDC Joint Motion to Continue Deadlines

05/19/17 C14-1092 WDC Order Granting Joint Motion to Continue Deadlines

07/06/17 C14-1092 WDC Agreed Motion for Stay and Abeyance

07/10/17 C14-1092 WDC Order (granting Agreed Motion for Stay and Abeyance. Matter stayed pending further proceedings in Washington Supreme Court).

NAME: DAVIS, Cecil Emile

D.O.B.: September 1, 1959

Race: Black

DATE OF CRIME: January 25, 1997

PLACE OF CRIME: Pierce County

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

DATE OF CONVICTION: February 6, 1998

SPECIAL SENTENCING: February 10-12, 1998

May 15, 2007

JUDGMENT AND Pierce County Superior Court

SENTENCE: Cause No. 97-1-00432-4

February 23, 1998, May 18, 2007

TRIAL JUDGE: Honorable Frederick W. Fleming

DEFENSE ATTYS: Ronald Ness

John L. Cross

Port Orchard, WA

Julia Lindstrom

Lloyd Alton, Jr.

Tacoma, WA

PROSECUTING ATTYS: Gerald Horne, Prosecuting Attorney

John W. Ladenburg (Former Prosecuting Attorney)

John M. Neeb, Deputy Prosecutor (Withdrew 01/26/00)

John Hillman, Deputy Prosecutor (Former Deputy Prosecuting Attorney)

Gerald T. Costello, Deputy Prosecutor

Pierce County Prosecutor's Office

930 Tacoma Avenue South, Room 946

Tacoma, WA 98402-2171

APPELLANT'S ATTYS: (Direct Appeal, WSSC Cause #66537-1)

Judith Mandel Ronald D. Ness

Port Orchard, WA Port Orchard, WA

(Direct Appeal, WSSC Cause #80209-2)

Eric Broman (Withdrew 1/15/09)

Eric Nielsen David Koch

Seattle, WA Seattle, WA

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

Gilbert Levy Catherine Ann Chaney

(Personal Restraint Petition, WSSC #89590-2)

**MICHAEL FILIPOVIC JACUELINE K. WALSH**

**MOHAMMAD A. HAMOUDI WALSH & LARRANAGA**

**FEDERAL PUBLIC DEFENDER 705 2ND AVE STE 501**

**1601 5TH AVE STE 700 SEATTLE, WA 98104-1715**

**SEATTLE, WA 98101-1642 (206) 352-7900 EXT 5**

**(206) 553-1100**

RESPONDENT'S ATTYS: (Direct Appeal, WSSC Cause #66537-1)

(Personal Restraint Petition, WSSC #70834-7)

Barbara Corey-Boulet, Deputy

John Hillman, Deputy

(Direct Appeal, WSSC Cause #80209-2)

Gerald Horne, Prosecuting Attorney

John Martin Neeb, Deputy

Kathleen Proctor, Deputy

(Personal Restraint Petition, WSSC #89590-2)

**MARK E. LINDQUIST, PROSECUTING ATTORNEY**

**KATHLEEN PROCTOR, DEPUTY**

DATE CAUSE ACTION

09/28/00 66537-1-WSSC Opinion affirming conviction and death sentence. Justice Smith authored the opinion for the Court. Justice Sanders dissented. State v. Davis, 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. *In re Davis*, 152 Wn.2d 647, 101 P.3d 1 (2004).

05/18/07 97-1-00432-4 Judgment and Sentence

02/10/11 80209-2 WSSC Oral argument held

09/20/12 80209-2 WSSC Opinion (affirming conviction and sentence of death). Majority opinion authored by Justice Alexander. Justice Fairhurst, joined by Justices Wiggins and Stephens dissented. Justice Gonzales did not participate. *State v. Davis,* 175 Wn.2d 287, 290 P.3d 43 (2012).

01/10/13 80209-2 WSSC Order (motion for reconsideration denied)

10/07/13 12-9685 USSC Petition for writ of certiorari denied. *Davis v. Washington*, 134 S. Ct. 62 (2013).

10/11/13 80209-2 WSSC Mandate

11/21/13 97-1-00432-4 Death Warrant (setting execution for December 17, 2013)

11/25/13 89590-2 WSSC Request For Appointment Of Attorneys Pursuant To RAP 16.25; Motion for Waiver of Filing Fee

12/12/13 89590-2 WSSC Order (Defendant's First Motion for Stay of Execution is granted)

12/09/14 89590-2 WSSC Petitioner’s Ex Parte Motion for Investigator Funds

01/08/15 89590-2 WSSC Order (denying Petitioner’s Ex Parte Motion for Investigator Funds without prejudice to filing any subsequent RAP 16.27 motion establishing facts that give rise to a substantial reason to believe investigator’s service will produce information that would support relief under RAP 16.4(c))

04/13/15 89590-2 WSSC Personal Restraint Petition

05/14/15 89590-2 WSSC Petitioner’s Supplemental Brief Modifying Motion for Extension of Deadlines to Include Extension of Statutory Time Limitation; Amended Personal Restraint Petition

05/19/15 89590-2 WSSC Order (granting Petitioner’s Supplemental Brief Modifying Motion for Extension of Deadlines to Include Extension of Statutory Time Limitation and accepting Petitioner’s Amended PRP)

08/12/15 89590-2 WSSC Respondent’s Brief

10/12/15 89590-2 WSSC Petitioner’s Reply Brief

12/03/15 89590-2 WSSC Order (State may file brief on the merits but any such brief is due not later than February 1, 2016)

05/05/16 89590-2 WSSC Motion for Appointment of Counsel

05/23/16 89590-2 WSSC Petitioner’s Counsel’s Answer to Motion for Appointment of Counsel

05/25/16 89590-2 WSSC State’s Motion for Extension of Time to File State’s Response

10/07/16 89590-2 WSSC Petitioner’s Motion for Appointment of Counsel

10/18/16 89590-2 WSSC Petitioner’s Counsels’ Answer to Motion

02/28/17 89590-2 WSSC Letter (from petitioner complaining about counsel)

05/18/17 89590-2 WSSC Order on Motions (denying Petitioner’s request for new counsel as moot and rejecting the State’s argument regarding the extension of time to file a reply)

05/18/17 89590-2 WSSC Opinion denying personal restraint petition. Justice Gonzalez authored the opinion for the Court. Justice Gordon McCloud filed a concurring opinion, in which Justice Fairhurst joined. Justice Madsen dissented. *In Re Davis*, 188 Wn.2d 356, 371, 395 P.3d 998 (2017)

05/24/17 17-00808 WDC Notice of Intention to File a Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. 2254

05/25/17 17-00808 WDC Notice of Appearance (attorney for Plaintiff Ashwin Cattamanchi)

06/01/17 89590-2 WSSC Notice of Appearance

06/01/17 89590-2 WSSC Motion to Extend Time to File a Motion for Reconsideration

06/02/17 17-00808 WDC Motion for Leave to Proceed In Forma Pauperis

06/05/17 17-00808 WDC Order (denying motion for leave to proceed In Forma Pauperis)

06/07/17 89590-2 WSSC State’s Objections to Motion for Substitution and for an Extraordinary Extension of Time to File RAP 12.4 Motion for Reconsideration

06/07/17 89590-2 WSSC Order on Motions (granting Motion for Extension of Time To File Motion for Reconsideration. Any motion for reconsideration should be served and filed by September 5, 2017)

06/07/17 89590-2 WSSC Motion for Reconsideration

06/08/17 17-00808 WDC Order Appointing Federal Public Defender (appointment of attorney Jacqueline K. Walsh for Petitioner)

06/12/17 89590-2 WSSC Order on Motions (approving substitution of new counsel, Michael Filipovic, Mohammad Hamoudi, and Jackie Walsh for current counsel Paula Olson and Roger Hunko)

06/22/17 89590-2 WSSC Order Calling for Response (directing Petitioner to file an answer to Respondent’s Motion for Reconsideration by July 7, 2017)

07/06/17 89590-2 WSSC Answer to State’s Motion for Reconsideration

07/13/17 89590-2 WSSC Letter (from federal defender Michael Filipovic re narrowing the request for review of records maintained by the Supreme Court re Capital Qualifications Committee)

07/14/17 89590-2 WSSC Letter (response from Court to Michael Filipovic, cc to Kathleen Proctor, Suzanne Elliot, and Michelle Foyer re letter received re narrowing previous request for records pertaining to the qualifications of counsel appointed in capital cases)

07/20/17 89590-2 WSSC Order on Motions (denying Respondent State of Washington’s motion for reconsideration)

**07/21/17 89590-2 WSSC Letter (from federal defender Michael Filipovic regarding his 7/13/17 letter and stating the time period request)**

**08/09/17 89590-2 WSSC Email (from Court to Michael Filipovic, cc all counsel, attaching three pdfs containing documents found to be responsive to the July 13, 2017 letter requesting records concerning qualifications of counsel appointed in capital cases)**

**09/05/17 89590-2 WSSC Motion for Reconsideration; Motion to Permit Filing a Motion for Reconsideration in Excess of Page Limit**

NAME: ELMORE, Clark Richard (aka James Elmore aka James Lee Dickey)

D.O.B.: November 17, 1951

Race: White

DATE OF CRIME: April 17, 1995

PLACE OF CRIME: Whatcom County

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

DATE OF GUILTY PLEA: July 6, 1995

SPECIAL SENTENCING: March 12, 1996

JUDGMENT AND Whatcom County Superior Court

SENTENCE: Cause No. 95-1-00310-1

May 3, 1996

TRIAL JUDGE: Honorable David Nichols

DEFENSE ATTYS: John Komorowski

Douglas Hyldahl

Bellingham, WA

PROSECUTING ATTYS: David S. McEachran, Prosecuting Attorney

Whatcom County Prosecutor's Office

Whatcom County Courthouse

311 Grand Avenue

Bellingham, WA 98225

(360) 676-6784

APPELLANT'S ATTYS: (Direct Appeal, Washington Supreme Court #64085-8)

Michael P. Iaria Meredith Martin Rountree

Seattle, WA Austin, TX

Rita GriffithCharlotte Cassady (Withdrew 03/06/98)

Seattle, WAMobile, AL

Jon Ostlund (06/17/96)

Bellingham, WA

PETITIONER'S ATTYS: (Personal Restraint Petition, Washington Supreme Court #70233-1)

Jeffrey E. Ellis Meredith Martin Rountree

Seattle, WA Austin, TX

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

**JEFFREY E. ELLIS ROBERT GOMBINER**

**LAW OFFICE OF ALSEPT & ELLIS LAW OFFICES OF GOMBINER**

**621 SW MORRISON ST, SUITE 1025 119 1ST AVENUE, SUITE 500**

**PORTLAND, OR 97205-3813 SEATTLE, WA 98104**

**(206) 218-7076 (206) 621-8777**

Steven Witchley (withdrew 8/29/12)

Seattle, WA

RESPONDENT'S ATTYS: (Personal Restraint Petition, Washington Supreme Court #70233-1)

David S. McEachran, Prosecuting Attorney

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

**ROBERT W. FERGUSON, ATTORNEY GENERAL**

**JOHN J. SAMSON, SENIOR COUNSEL**

**CORRECTIONS DIVISION**

**PO BOX 40116**

**OLYMPIA, WA 98504-0116**

**(360) 586-1445**

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

Olympia, WA

DATE CAUSE ACTION

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. State v. Elmore, 139 Wn.2d 250, 985 P.2d 289 (1999)

10/02/00 99-9587 USSC Petition for Writ of Certiorari denied, *Elmore v. Washington*, 531 U.S. 837, 121 S. Ct. 98, 148 L. Ed. 2d 57 (2000)

10/09/00 64095-8 WSSC Mandate issued

10/10/00 70233-1 WSSC Motion for Appointment of Counsel and for Stay of Execution Pursuant to Rules 16.24 and 16.25 of the Rules of Appellate Procedure

10/31/00 95-1-00310-1 Death Warrant (setting execution for November 28, 2000)

11/07/00 70233-1 WSSC Notation Order (motion for stay of execution is granted)

06/29/01 70233-1 WSSC Petitioner’s Personal Restraint Petition and Brief in Support

09/27/02 70233-1 WSSC Order (trial court is directed to hold a reference hearing on the issue of whether counsel's failure to consult and call mental health experts in the penalty phase was deficient performance. The court is directed to take evidence on whether counsel's representation in this regard fell below an objective standard of reasonableness based on consideration of all circumstances, including whether any legitimate strategic or tactical reasons supported the decision not to consult and call such experts. The trial court at the conclusion is to enter findings of fact on the issue referred and expedite the process)

06/05/03 70233-1 WSSC Order (Petitioner has not established facts that give rise to a substantial reason to believe that the renewed motion for appointment of attorney expert and renewed motion for funds to hire an investigator will produce information that would support relief under RAP 16.4(c). The order for the reference hearing does not require the trial court to make a legal conclusion regarding the adequacy of trial counsel’s performance. The trial court is directed to find the facts regarding the performance of trial counsel, leaving for this court the determination whether trial counsel’s performance was legally adequate. Therefore, no funds are authorized for attorney experts or an investigator. The request to file this order under seal is denied)

01/27/05 70233-1 WSSC Trial Court Findings of Fact

11/21/07 70233-1 WSSC Opinion denying personal restraint petition. Justice Madsen authored the opinion for the Court. Justice Sanders dissented. *In re Elmore*, 162 Wn.2d 236, 172 P.3d 335 (2007)

01/14/08 C08-0053 WDC Application for Writ of Habeas Corpus; Application for Appointment of Counsel; Request for Stay of Execution

01/18/08 C08-0053 WDC Order Permitting Elmore to File Amended Petition; Order Granting Motion for Stay of Execution

02/22/08 70233-1 WSSC Order Denying Motion for Reconsideration

04/22/08 C08-0053 WDC First Amended Petition for Writ of Habeas Corpus

11/02/11 C08-0053 WDC Order (denying Petitioner’s motion for evidentiary hearing)

06/21/12 C08-0053 WDC Order Denying Petition for Habeas Corpus; Judgment in a Civil Case (certificate of appealability denied)

06/28/12 C08-0053 WDC Order Granting Respondent's Motion to Amend the Court's January 18, 2008, Order Staying Elmore's Execution

08/03/12 C08-0053 WDC Order Denying Reconsideration

08/10/12 C08-0053 WDC Petitioner’s Notice of Appeal

05/14/13 12-99003 9 CIR Order (granting certificate of appealability on four claims and setting briefing schedule)

09/09/14 12-99003 9 CIR Oral argument held

04/01/15 12-99003 9 CIR Opinion affirming the decision of the district court. Judge Milan D. Smith authored the opinion of the court, with Judge Clifton concurring. Judge Hurwitz filed a separate opinion concurring in part and concurring in the result. *Elmore v. Sinclair*, 781 F.3d 1160 (9th Cir. 2015)

05/15/15 12-99003 9 CIR Petition for Panel Rehearing and Petition for Rehearing En Banc

09/03/15 12-99003 9 CIR Order and Amended Opinion (amending the Opinion and concurring Opinion filed on April 1, 2015, and denying Elmore’s petition for rehearing and rehearing en banc).

*Elmore v. Sinclair*, 799 F.3d 1238 (9th Cir. 2015)

09/04/15 12-99003 9 CIR Order (granting Appellant’s motion to stay the mandate pending his petition for writ of certiorari)

11/19/15 15-A550 USSC Application to extend time to file petition for writ of certiorari from December 2, 2015 to January 16, 2016

11/24/15 15-A550 USSC Application granted (deadline is January 19, 2016)

01/19/16 15-7848 USSC Petition for a Writ of Certiorari and Motion to Leave to Proceed in Forma Pauperis

02/03/16 15-7848 USSC Petitioner’s Supplemental Brief

02/26/16 15-7848 USSC Respondent’s Response to Petition for a Writ of Certiorari

03/08/16 15-7848 USSC Petitioner’s Reply

10/17/16 15-7848 USSC Petition for a Writ of Certiorari denied. Justice Sotomayor, joined by Justice Ginsberg, dissented from the denial of certiorari. *Elmore v. Holbrook*, 580 U.S. \_\_\_\_ (2016)

11/03/16 15-7848 USSC Petition for Rehearing filed

12/05/16 15-7848 USSC Petition for Rehearing denied. *Elmore v. Holbrook*, 580 U.S. \_\_\_\_ (2016)

12/29/16 95-1-00310-1 \*Non-Judicial: Warrant of Reprieve issued by Governor Jay Inslee; Reprieve will remain in effect until rescinded by Governor Inslee or a future Governor of Washington State

NAME: GENTRY, Jonathan Lee

D.O.B.: August 7, 1956

Race: Black

DATE OF CRIME: June 13, 1988

PLACE OF CRIME: Kitsap County

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

DATE OF CONVICTION: June 26, 1991

SPECIAL SENTENCING: July 2, 1991

JUDGMENT AND: Kitsap County Superior Court

SENTENCE Cause No. 88-1-00395-3

July 22, 1991

TRIAL JUDGE: Honorable Terence Hanley

DEFENSE ATTYS: Frederick D. Leatherman, Jr.

Jeffery P. Robinson

PROSECUTING ATTYS: Russell Hauge, Prosecuting Attorney

C. Danny Clem (former Prosecuting Attorney)

Irene K. Asai, Deputy Prosecuting Attorney

Brian T. Moran, Deputy Prosecuting Attorney

APPELLANT'S ATTYS: (Direct Appeal, Washington Supreme Court #58415-0)

Michael P. Iaria Frederick D. Leatherman, Jr.

Seattle, WA Seattle, WA

PETITIONER'S ATTYS: (Personal Restraint Petition, Washington Supreme Court #62677-4; #92315-9)

(Federal Habeas Corpus, USDC WDC #C99-0289L, 9th Cir # 09-99021, USSC #12-10321)

**RITA J. GRIFFITH TIMOTHY FORD**

**GRIFFITH & COLE MACDONALD HOAGUE & BAYLESS**

**1305 NE 45TH STREET, SUITE 205 705 SECOND AVE, SUITE 1500**

**SEATTLE, WA 98105 SEATTLE, WA 98104-1745**

**(206) 547-1742 (206) 622-1604**

Brian Tsuchida (withdrew on 5/13/08) Meredith Rountree (withdrew on 5/1/09)

Seattle, WA Austin, TX

Scott Engelhard (withdrew on 5/1/09)

Seattle, WA

RESPONDENT'S ATTYS: (Personal Restraint Petition, Washington Supreme Court #62677-4; #92315-9)

Russell Hauge, Prosecuting Attorney

Randy Sutton, Deputy

Pamela B. Loginsky, Special Deputy

Washington Association Of Prosecuting Attorneys

RESPONDENT'S ATTYS: (Federal Habeas Corpus, USDC WDC #C99-0289L, 9th Cir # 09-99021, USSC #12-10321)

**ROBERT W. FERGUSON, Attorney General**

**Paul D. Weisser, SENIOR COUNSEL**

**gregory j. rosen, Assistant attorney general**

**CORRECTIONS Division**

**P.O. Box 40116**

**Olympia, WA 98504-0116**

**(360) 586-1445**

DATE CAUSE ACTION

08/08/91 58415-0 WSSC *State v. Gentry*; 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. *State v. Gentry*, 125 Wn.2d 570, 888 P.2d 1105 (1995)

10/02/95 94-9582 USSC Petition for Writ of Certiorari denied. *Gentry v. Washington*, 516 U.S. 843, 116 S. Ct. 131, 133 L. Ed. 2d 79 (1995)

10/05/95 58415-0 WSSC Mandate issued

11/02/95 88-1-00395-3 Death Warrant (setting execution for December 5, 1995)

11/14/95 58415-0 WSSC Order staying execution

12/15/95 62677-4 WSSC Order appointing counsel

02/18/99 62677-4 WSSC Opinion denying personal restraint petition. Justice Talmadge authored the opinion for the Court. Justice Sanders, joined by Justice Johnson, dissented in part. *In re Gentry*, 137 Wn.2d 378, 972 P.2d 1250 (1999)

06/30/99 62677-4 WSSC Order (Petitioner’s motion for reconsideration is denied); Order Changing Opinion; Order (Respondent’s motion, to dissolve the stay of execution upon issuance of the certificate of finality, is granted)

07/19/99 C99-0289 WDC Order (staying execution of Jonathan Lee Gentry)

07/21/99 62677-4 WSSC Certificate of Finality

07/26/99 62677-4 WSSC Order (awarding costs in the total amount of $178,869.57)

10/22/99 C99-0289 WDC Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254

01/24/00 C99-0289 WDC Respondent's Answer and Memorandum of Authorities

01/24/00 C99-0289 WDC First Amended Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. §2254

03/09/06 C99-0289 WDC Evidentiary hearing held

09/04/08 C99-0289 WDC Order on Petition for Habeas Relief Based on *Brady* and *Napue* Violations (denying habeas relief).

09/05/08 C99-0289 WDC Order on *Brady/Napue* Claims Regarding Leonard Smith (denying habeas relief); Order Denying Petitioner’s Motion for Evidentiary Hearing on Denial of Effective Assistance of Counsel Due to Failure to Investigate

09/15/08 C99-0289 WDC Order Granting Respondent’s Motion for Summary Judgment, Denying Petitioner’s Cross-Motion for Summary Judgment, and Order Denying Amended Habeas Petition. *Gentry v. Sinclair*, 576 F. Supp. 2d 1130 (2008).

03/23/09 C99-0289 WDC Order Denying Motion for Reconsideration. *Gentry v. Sinclair*, 609 F. Supp. 2d 1179 (2009).

04/23/09 C99-0289 WDC Judgment in a Civil Case

04/24/09 C99-0289 WDC Order Denying Motion to Supplement Motions for Reconsideration; Amended Judgment in a Civil Case

05/22/09 C99-0289 WDC Order Denying Motion for New Trial or to Amend Judgment

05/26/09 C99-0289 WDC Notice of Appeal

10/02/09 C99-0289 WDC Order Granting Certificate of Appealability

12/30/10 84039-3 WSSC Opinion denying second personal restraint petition [challenge to conditions of confinement]. Chief Justice Madsen authored the opinion for the Court. Justice Stephens, joined by Justice Sanders, dissented. *In re Gentry*, 170 Wn.2d 711, 245 P.3d 766 (2010).

02/01/11 88-1-00395-3 Motion for Post-Conviction DNA Testing; Motion for Appointment of Counsel

03/03/11 84039-3 WSSC Order (Motion for Reconsideration is denied)

03/04/11 84039-3 WSSC Certificate of Finality

04/06/11 88-1-00395-3 Response to Motion for Post-Conviction DNA Testing

05/31/11 10-10814 USSC Petition for Writ of Certiorari [re: second PRP]

07/25/11 88-1-00395-3 Order Granting Post-Conviction DNA Testing

10/10/11 86585-0 WSSC Personal Restraint Petition [Third]

10/17/11 10-10814 USSC Petition for writ of certiorari denied [re 84039-3]. *Gentry v. Sinclair*, 132 S. Ct. 453 (2011).

08/28/12 09-99021 9 CIR Opinion affirming the judgment of the district court. Judge Clifton authored the opinion, with Judges Fisher and Paez concurring. *Gentry v. Sinclair,* 693 F.3d 867 (9th Cir. 2012).

01/15/13 09-99021 9 CIR Order and Amended Opinion (amending the Court’s opinion affirming the district court’s judgment and denying Gentry’s petition for rehearing and rehearing en banc). *Gentry v. Sinclair*, 705 F.3d 884 (9th Cir. 2013)

05/15/13 12-10321 USSC Petition for Writ of Certiorari [re *Gentry v. Sinclair*]

09/20/13 88-1-00395-3 Ruling on Motion to Deny Further Post Conviction DNA Testing (granting State’s motion)

10/07/13 12-10321 USSC Petition for writ of certiorari denied. *Gentry v. Sinclair*, 134 S. Ct. 102 (2013).

10/07/13 C99-0289 WDC Respondent’s Motion to Vacate Stay of Execution

10/09/13 09-99021 9 CIR Mandate

10/28/13 88-1-00395-3 Order Denying Motion to Reconsider Defendant’s Motion for Recusal; Order Denying Further Post-Conviction DNA Testing

11/21/13 88-1-00395-3 Notice of Discretionary Review

89620-8 WSSC

12/02/13 12-10321 USSC Petition for rehearing denied. *Gentry v. Sinclair*, 134 S. Ct. 726 (2013).

12/02/13 86585-0 WSSC Motion for a Stay of Execution of Death Sentence

12/16/13 86585-0 WSSC Order (Appellant's Motion for a Stay of Execution of Death Sentence is granted, and execution of the death sentence is stayed pending resolution of the personal restraint petition in this Court; Appellant's Motion for Leave to File Pleadings from *Gentry v. Sinclair*, U.S. Supreme Court. No. 12-10321 is denied)

01/23/14 86585-0 WSSC Opinion denying third personal restraint petition and granting State’s motion to strike appendix to Petitioner’s brief in response to briefs of amici. Justice Stephens authored the opinion for the Court. Justice Wiggins dissented. *In re Gentry*, 316 P.3d 1020 (2014).

01/28/14 09-99021 9 CIR Motion to Recall Mandate

02/05/14 C99-0289 WDC Order Granting Motion to Vacate Stay of Execution

02/12/14 09-99021 9 CIR Order (motion to recall mandate denied)

04/14/14 89620-8 WSSC Appellant’s Brief

05/05/14 86585-0 WSSC Order Changing Opinion. *In re Gentry*, 179 Wn.2d 614, 316 P.3d 1020 (2014) (amended opinion)

05/30/14 86585-0 WSSC Certificate of Finality

06/06/14 86585-0 WSSC Order (denying motion to continue stay of execution pending ruling on stay in related case)

06/06/14 89620-8 WSSC Order (granting motion for stay of execution)

06/17/14 89620-8 WSSC Respondent’s Brief; Supplemental Designation of Clerk’s Papers

07/14/14 86585-0 WSSC Ruling on Cost Bill (Costs in the amount of $29,088.84 shall be awarded to the Washington State Office of Public Defense, and costs in the amount of $408.00 shall be awarded to Respondent, Kitsap County Prosecuting Attorney's Office, to be paid by Petitioner, Jonathan Lee Gentry.)

07/25/14 89620-8 WSSC Appellant’s Reply Brief

09/18/14 86585-0 WSSC Supplemental Judgment (re: ruling on costs)

03/10/15 89620-8 WSSC Oral argument

08/20/15 89620-8 WSSC Opinion affirming the trial court’s denial of further DNA testing. Justice Stephens authored the unanimous opinion for the Court. Justices McCloud and Gonzalez are recused.

S*tate v. Gentry,* 183 Wn.2d 749, 356 P.3d 714 (2015)

08/27/15 89620-8 WSSC Cost Bill

09/08/15 89620-8 WSSC Motion for Stay; Motion for Reconsideration

09/30/15 92315-9 WSSC Personal Restraint Petition (Fourth); Motion to Waive Filing Fee

10/01/15 92315-9 WSSC Ruling on Motions (payment for filing fee waived)

10/02/15 92315-9 WSSC Order (granting Motion for Stay, and the execution of the death sentence is stayed pending resolution of the Personal Restraint Petition in this Court)

10/02/15 89620-8 WSSC Order (denying Motion to Extend Stay)

10/02/15 92315-9 WSSC Court Letter (authoring filing of petition without prepayment of filing fee; assigning Supreme Court Cause No. 92315-9; Respondent’s response to Personal Restraint Petition and answering brief, if any, due February 1, 2016; Petitioner’s reply due 60 days from date of receipt of Respondent’s response and answering brief)

10/19/15 89620-8 WSSC Order Changing Opinion

11/10/15 89620-8 WSSC Mandate; Ruling on Cost Bill

12/15/15 89620-8 WSSC Supplement Judgment (costs of $95.71 are taxed in favor of Respondent Kitsap County Prosecuting Attorney’s Office; costs of $6,025.88 are taxed in favor of Washington State Office of Public Defense, and against Appellant Jonathan Gentry pursuant to Clerk’s Ruling on Costs)

02/03/16 92315-9 WSSC State’s Motion for Extension to File its Response

02/09/16 92315-9 WSSC Order on Motions (granting State’s Motion for Extension of Time to File Response. Due March 16, 2016)

02/24/16 89620-8 WSSC Notice from Respondent that the Exhibits in Case number 58415-0 were received by this court.

03/16/16 92315-9 WSSC Answer to Personal Restraint Petition Due

03/16/16 92315-9 WSSC State’s Motion for Stay

03/25/16 92315-9 WSSC Order on Motions (granting State’s Motion for Stay pending decision in *State v. Gregory*, WSSC 88086-7)

NAME: GREGORY, Allen Eugene

D.O.B.: June 9, 1972

Race: Black

DATE OF CRIME: July 27, 1996

PLACE OF CRIME: Pierce County

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

DATE OF CONVICTION: May 15, 2012

SPECIAL SENTENCING: June 13, 2012

JUDGMENT AND Pierce County Superior Court

SENTENCE: Cause No. 98-1-04967-9

TRIAL JUDGE: Honorable Rosanne Buckner

DEFENSE ATTYS: Zenon Olbertz

Brett A. Purtzer

Attorneys At Law

1008 Yakima Avenue, Ste 302

Tacoma, WA 98405-4850

(253) 272-9967

PROSECUTING ATTYS: Mark Lindquist, Prosecuting Attorney

John Neeb, Deputy Prosecuting Attorney

Pierce County Prosecutor's Office

County-City Building

930 Tacoma Avenue South, Room 946

Tacoma, WA 98402-2102

(253) 798-7400

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

**NEIL M. FOX LILA J. SILVERSTEIN**

**LAW OFFICE OF FOX, PLLC WASHINGTON APPELLATE PROJECT**

**2125 WESTERN AVE STE 330 1511 3RD AVE STE 701**

**SEATTLE, WA 98121-2140 SEATTLE, WA 98101-3647**

**(206) 728-5440 (206) 587-2711**

RESPONDENT'S ATTYS: (Direct Appeal, WSSC No. 88086-7)

**JOHN MARTIN NEEB, PROSECUTING ATTORNEY**

**KATHLEEN PROCTOR, DEPUTY PROSECUTOR**

**930 TACOMA AVE S, RM 946**

**TACOMA, WA 98402-2171**

**(253) 798-7400**

11/30/06 71155-1 WSSC Opinion reversing conviction for the rape of R.S., affirming the aggravated first degree murder conviction for the murder of G.H., reversing the death sentence, and remanding for resentencing in the murder case. Justice Bridge authored the opinion for the Court. Justice Sanders filed a dissenting opinion. *State v. Gregory*, 158 Wn.2d 759, 147 P.3d 1201 (2006)

06/13/12 98-1-04967-9 Judgment and Sentence

11/09/12 98-1-04967-9 Notice of Appeal

11/09/12 88086-7 WSSC Agreed Order RE: Indigency; Order After Evidentiary Hearing on Claim of Juror Misconduct; Judgment and Sentence/Warrant of Commitment; Notice of Judgment and Sentence Imposing Death Penalty

01/04/13 88086-7 WSSC Order (Neil Fox and Lila Silverstein are appointed as counsel for Gregory.)

09/16/13 88086-7 WSSC Ruling on Motions (the motion to release sealed transcripts is granted, and copies of the two sealed transcripts (from February 13, 2009 and February 20, 2009) shall be released to counsel for Mr. Gregory, but shall otherwise remain sealed as to the State and anyone else.)

01/09/14 88086-7 WSSC Order (Motion to Complete the Process of Compiling a Full Set of Aggravated Murder Reports is denied)

03/10/14 88086-7 WSSC Opening Brief of Appellant; Motion to Transfer Selected Transcripts from Earlier Appeal (#71155-1) to this Case

07/10/14 88086-7 WSSC Order (motion to transfer selected transcripts from earlier appeal to this case and the motion to make one page from transcript of dismissed rape case part of record in this case are granted)

08/14/14 88086-7 WSSC Order (statement in compliance with RCW 10.95.150)

01/08/15 88086-7 WSSC Order (granting appellant’s Motion for Permission to File Updated Report on Race and the Death Penalty in Washington; denying State’s Motion to Strike Improper Appendices to Appellant’s Brief)

04/20/15 88086-7 WCCS Brief of Respondent

06/30/15 88086-7 WSSC Appellant’s Reply Brief

12/22/15 88086-7 WSSC Order on Motions (granting motion of Fred T. Korematsu Center for Law and Equality for Permission to File Amicus Curiae Brief in Support of Appellant)

12/22/15 88086-7 WSSC Brief of Amicus Curiae Fred T. Korematsu Center for Law and Equality in Support of Appellant

01/08/16 88086-7 WSSC Order (granting Motion for Permission to File Amicus Curiae Brief on Behalf of Washington Coalition to Abolish the Death Penalty)

01/08/16 88086-7 WSSC Brief of Amicus Curiae, Washington Coalition to Abolish the Death Penalty

01/13/16 88086-7 WSSC Order (granting Motion of 56 Former And Retired Washington State Judges For Leave To File Amicus Brief And Motion To File Overlength Brief)

01/13/16 88086-7 WSSC Brief of Amicus Curiae, 56 Former and Retired WA State Judges, a Former U.S. Attorney, ACLU, ACLU - Washington, Church Council of Greater Seattle, Catholic Mobilizing Network, Faith Action Network, Friends Committee on WA Public Policy, League of Women Voters of WA, Murder Victims Families for Reconciliation, Two Law School Professors, WA Association of Criminal Defense Lawyers, and WA Defenders Association

01/19/16 88086-7 WSSC Letter (clarification and adjustments to counsel for Appellant’s oral argument schedule)

01/19/16 88086-7 WSSC Fifth Statement of Additional Authorities

02/16/16 88086-7 WSSC Notice of Intent to Withdraw of David Keenan

02/23/16 88086-7 WSSC Appellant’s Seventh Statement of Additional Authorities

02/24/16 88086-7 WSSC Respondent’s Statement of Additional Authorities

02/25/16 88086-7 WSSC Appellant’s Disk with Trial Report Numbers 313-348

02/25/16 88086-7 WSSC Oral Argument

03/16/16 88086-7 WSSC Other Order (granting a special hearing before WSSC Commissioner Pierce and directing each party to file a memorandum of no more than 25 pages no later than 30 days from the date of this order.)

04/15/16 88086-7 WSSC State’s Response to March 16, 2016 Court Order re: Special Proceeding

04/15/16 88086-7 WSSC Appellant’s Memorandum regarding March 16, 2016 Court Order re: Special Proceeding

05/20/16 88086-7 WSSC Other Order (granting parties’ agreed proposal for conducting a special proceeding and ordering the parties to serve on the other party and file in this court the identified documents on the dates established in the agreed proposal.)

05/27/16 88086-7 WSSC Other (Copies of the coding manual and data file for the study on the role of race in capital sentencing in Washington.)

07/08/16 88086-7 WSSC State’s Expert’s Curriculum Vitae and Report on the Reliability of the Methodology and Conclusions of the Beckett Report on the Role of Race in Washington Capital Cases

08/25/16 88086-7 WSSC Response to Evaluation of 'The Role of Race in Washington State Capital Sentencing, 1981-2014' by Nicholas Church

11/07/16 88086-7 WSSC Other Ruling (determination to appoint a neutral technical advisor.)

11/18/16 88086-7 WSSC Stayed (pending completion of 11/07/16 ruling)

06/12/17 88086-7 WSSC Other Ruling (Commissioner’s Interrogatories to Parties’ Experts; answers to interrogatories should be received by July 12, 2017. Upon consideration of answers, a final report will be submitted)

07/11/17 88086-7 WSSC Dr. Scurich’s Answers to the Commissioner’s Interrogatories

07/12/17 88086-7 WSSC Response to Commissioner’s Interrogatories to Parties’ Experts

NAME: SCHERF, Byron Eugene

D.O.B.: August 3, 1958

Race: Caucasian

DATE OF CRIME: January 29, 2011

PLACE OF CRIME: Snohomish County

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

DATE OF CONVICTION: May 9, 2013

SPECIAL SENTENCING: May 15, 2013

JUDGMENT AND Snohomish County Superior Court

SENTENCE: Cause No. 11-1-00404-4

May 15, 2013

TRIAL JUDGE: Honorable George Appel

DEFENSE ATTYS: Karen Ann Halverson

Jon Thomas Scott

Everett, WA

James Elliot Lobsenz

Seattle, WA

PROSECUTING ATTYS: Mark Roe, Prosecuting Attorney

Edward E. Stemler, Deputy Prosecutor

Paul Stern, Deputy Prosecutor

3000 Rockefeller

Everett, WA 98201

(425) 388-3333

APPELLANT'S ATTYS: (Direct Appeal, WSSC No. 88906-6)

**RITA GRIFFITH MARK LARRANAGA**

**ATTORNEY AT LAW WALSH & LARRANAGA**

**4616 25TH AVE NE 705 2ND AVE STE 501**

**SEATTLE, WA 98105-4523 SEATTLE, WA 98104-1715**

**(206) 547-1742 (206) 325-7900**

RESPONDENT'S ATTYS: (Direct Appeal, WSSC No. 88906-6)

**MARK ROE, PROSECUTING ATTORNEY**

**SETH FINE, DEPUTY PROSECUTING ATTORNEY**

**SNOHOMISH COUNTY COURTHOUSE**

**3000 ROCKEFELLER AVE**

**EVERETT, WA 98201-4060**

**(425) 388-3333**

05/15/13 11-1-00404-4 Judgment and Sentence

05/16/13 88906-6 WSSC Notice for Mandatory Review of Death Sentence Under RCW 10.95.100

05/31/13 88906-6 WSSC Notice of Appeal

06/03/13 88906-6 WSSC Notice of Cross-Appeal to the Supreme Court

06/21/13 88906-6 WSSC Order (Rita Griffith and Mark Larranaga are appointed as counsel)

08/30/13 88906-6 WSSC Pleading dated August 27, 2013 (the Appellant requests to stop the "general" review of conviction and/or sentence, expedite the mandatory sentence review, and expedite the death sentence imposed); Motion to Strike and Withdraw Notice of Appeal

09/03/13 88906-6 WSSC Response of Petitioner’s Counsel to Pleading dated August 27, 2013

09/03/13 88906-6 WSSC Letter from Appellant (stating he was not clearly thinking and requesting to withdraw his previous motion to strike his appeal)

08/06/14 88906-6 WSSC Opening Brief of Appellant

09/02/14 88906-6 WSSC Statement of Additional Grounds for Review

10/08/14 88906-6 WSSC Order (statement in compliance with RCW 10.95.150)

07/01/15 88906-6 WSSC Respondent’s Brief

07/30/15 88906-6 WSSC Statement of Additional Grounds for Review

07/30/15 88906-6 WSSC Court Letter (rejecting petitioner’s SAG Reply Brief and related letters)

11/03/15 88906-6 WSSC Appellant’s Reply Brief; Appellant’s Motion to File Overlength Reply Brief; Appellant’s Motion to Permit Filing of Supplemental Assignment of Error and Supplemental Brief in Support

11/03/15 88906-6 WSSC Answer to Motion to File Supplemental Brief

11/18/15 88906-6 WSSC Order (granting Appellant’s Motion to File Overlength Reply Brief and Motion to Permit Filing of Supplemental Assignment of Error and Supplemental Brief in Support.)

01/21/16 88906-6 WSSC Brief of Respondent in Answer to Supplemental Assignment of Error

06/24/16 88906-6 WSSC Oral Argument Setting

09/15/16 88906-6 WSSC Letter from Petitioner’s Counsel regrading Division of Oral Argument Time

09/26/16 88906-6 WSSC Letter from Respondent’s Counsel regrading Division of Oral Argument Time

09/26/16 88906-6 WSSC Motion for Amicus Curiae Brief

10/04/16 88906-6 WSSC Order (granting motion to file amicus curiae brief.)

10/04/16 88906-6 WSSC Brief of Amicus Curiae of The Fair Punishment Project, The Charles Hamilton Houston Institute for Race & Justice and the Promise of Justice Initiative

10/24/16 88906-6 WSSC Respondent’s Answer to Amicus Curiae Brief

10/27/16 88906-6 WSSC Petitioner’s Additional Authorities

10/31/16 88906-6 WSSC Letter from Petitioner’s Counsel regarding Time and Issues for Oral Argument

11/01/16 88906-6 WSSC Letter from Respondent’s Counsel regarding Time and Issues for Oral Argument

11/10/16 88906-6 WSSC Oral Argument scheduled

11/17/16 88906-6 WSSC Order to Stay (pending final report in *State v. Gregory*, WSSC 88086-7)

NAME: SCHIERMAN, Conner Michael

D.O.B.: September 14, 1981

Race: Caucasian

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

PLACE OF CRIME: King County

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

DATE OF CONVICTION: April 12, 2010

SPECIAL SENTENCING: May 5, 2010

JUDGMENT AND King County Superior Court

SENTENCE: Cause No. 06-1-06563-4

May 27, 2010

TRIAL JUDGE: Honorable Gregory Canova

DEFENSE ATTYS: James Conroy

Peter Connick

Seattle, WA

PROSECUTING ATTYS: Dan Satterberg, Prosecuting Attorney

Scott O’Toole, Senior Deputy Prosecutor

King County Courthouse

516 Third Avenue

Seattle, WA 98104

(206) 296-0100

APPELLANT'S ATTYS: (Direct Appeal, WSSC No. 84614-6)

**SUZANNE ELLIOTT**

**DAVID ZUCKERMAN**

**ATTORNEYS AT LAW**

**705 2ND AVENUE, SUITE 1300**

**SEATTLE, WA 98104-1797**

**(206) 623-0291**

RESPONDENT'S ATTYS: (Direct Appeal, WSSC No. 84614-6)

**DAN SATTERBERG, PROSECUTING ATTORNEY**

**DONNA LYNN WISE, PROSECUTING ATTORNEY**

**ERIN HAIROPOULOS BECKER, PROSECUTING ATTORNEY**

**KING COUNTY COURTHOUSE**

**516 THIRD AVENUE**

**SEATTLE, WA 98104**

**(206) 296-0100**

06/01/10 84614-6 WSSC Judgment and Sentence

06/01/10 84614-6 WSSC Notice of Appeal; Motion for Order of Indigency and Affidavit in Support of Motion

06/02/10 84614-6 WSSC Order Authorizing Appeal *In Forma Pauperis*, Appointment of Counsel and Preparation of Records

06/23/10 84614-6 WSSC Order (Suzanne Elliott and David Zuckerman are appointed as counsel.)

03/02/11 84614-6 WSSC Order (Appellant's Motion to Stay the DOC's Collection of Costs Specifically Waived by Trial Court Order is denied)

09/29/11 06-1-06563-4 Motion for Access to Juror Information GR 31(j)

10/26/11 84614-6 WSSC Joint letter response regarding Court's April 29, 2011, remand order. "Motion for Access to Juror Information GR 31(j)" is set for a hearing in the trial court on November 9, 2011. The appellant will send the results to the Supreme Court following the hearing.

11/09/11 06-1-06563-4 Order re Access to Juror Information GR 31(j)

11/18/13 84614-6 WSSC Appellant's Opening Brief

07/03/14 84614-6 WSSC Brief of Respondent

09/15/14 84614-6 WSSC Appellant’s Reply Brief

09/25/14 84614-6 WSSC Order (statement in compliance with RCW 10.95.150)

02/09/15 84614-6 WSSC Order (granting motion to file an amicus curiae brief on behalf of the American Civil Liberties Union of Washington)

02/09/15 84614-6 WSSC Brief of Amicus Curiae of the American Civil Liberties Union of Washington

02/26/15 84614-6 WSSC Respondent’s Answer to Amicus Curiae brief

05/05/15 84614-6 WSSC Oral argument held

07/08/15 84614-6 WSSC Respondent’s Additional Authorities

12/15/15 84614-6 WSSC Respondent’s Second Statement of Additional Authorities

12/15/15 84614-6 WSSC Petitioner’s Fifth Supplemental Authority

NAME: YATES, Robert Lee, Jr.

D.O.B.: May 27, 1952

Race: White

DATE OF CRIME: 1997 and 1998

PLACE OF CRIME: Pierce County

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

DATE OF CONVICTION: September 19, 2002

SPECIAL SENTENCING: October 3, 2002

JUDGMENT AND: Pierce County Superior Court

SENTENCE Cause No. 00-1-03253-8

October 9, 2002

TRIAL JUDGE: Honorable John McCarthy

DEFENSE ATTYS: Roger Hunko Mary Kay High

Port Orchard, WA Tacoma, WA

PROSECUTING ATTYS: Gerald Horne, Prosecuting Attorney

Jerry Costello, Deputy Prosecutor

Barbara Corey-Boulet, Deputy Prosecutor

930 Tacoma Avenue South

Tacoma, WA 98402

(253) 798-7400

APPELLANT'S ATTYS: (Direct Appeal, WSSC No. 73155-1)

Gregory Link

Thomas Kummerow

Nancy Collins

WA Appellate Project

Roger Hunko (withdrew 11/04/02)

Port Orchard, WA

PETITIONER’S ATTYS**:** (Personal Restraint Petition, WSSC No. 82101-1)

Ronald Ness Judith Mandel

Port Orchard, WA Xi'an Shaanxi Province ZZ 710063

Jeffrey E. Ellis Steve Witchley

Portland, OR Seattle, WA

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

**JEFFREY E. ELLIS TODD MAYBROWN**

**OR CAPITAL RESOURCE CTR ALLEN, HANSEN & MAYBROWN, P.S.**

**621 SW MORRISON ST, SUITE 1025 600 UNIVERSITY STREET, SUITE 3020**

**PORTLAND, OR 97205-3813 SEATTLE, WA 98101**

**(206) 218-7076 (206) 447-9681**

RESPONDENT'S ATTYS: (Direct Appeal, WSSC No. 73155-1)

Gerald Horne, Prosecuting Attorney

Jerry Costello, Deputy Prosecutor

Barbara Corey-Boulet, Deputy Prosecutor (Withdrew 02/03/04)

Kathleen Proctor, Deputy Prosecutor

Donna Yumiko Masumoto, Deputy Prosecutor

(Personal Restraint Petition, WSSC No. 82101-1)

Kathleen Proctor, Deputy Prosecutor

Donna Yumiko Masumoto, Deputy Prosecutor

Karen Anne Watson, Deputy Prosecutor

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

**ROBERT W. FERGUSON, Attorney General**

**PAUL D. WEISSER, SENIOR COUNSEL**

**Mandy lynn rose, assistant attorney general**

**CORRECTIONS Division**

**P.O. Box 40116**

**Olympia, WA 98504-0116**

**(360) 586-1445**

DATE CAUSE ACTION

10/17/02 73155-1 WSSC Notice of Appeal

09/27/07 73155-1 WSSC Opinion affirming conviction and death sentence. Justice Owens authored the opinion for the Court. Justices Johnson and Chambers authored opinions concurring. Justice Sanders dissented. *State v. Yates,* 161 Wn.2d 714, 168 P.3d 359 (2007).

12/24/07 73155-1 WSSC Order Denying Appellant’s Motion for Reconsideration

01/03/08 73155-1 WSSC Ruling on Cost Bill (Costs in the amount of $173,254.08 are awarded to the Office of Public Defense and costs in the amount of $183.56 are awarded to Respondent State of Washington, Pierce County, to be paid by Appellant Yates).

06/23/08 07-10069 USSC Petition for Writ of Certiorari denied. *Yates v. Washington*, 554 U.S. 922 (2008).

08/01/08 73155-1 WSSC Mandate

09/05/08 00-1-03253-8 Death Warrant (setting execution date for September 19, 2008)

09/08/08 82101-1 WSSC Application for Stay of Execution Under RAP 16.24(c)

09/10/08 82101-1 WSSC Motion for Appointment of Counsel

09/11/08 82101-1 WSSC Personal Restraint Petition (placeholder petition)

09/11/08 82101-1 WSSC Order Granting Stay of Execution and Appointing Counsel

08/03/09 82101-1 WSSC Amended Personal Restraint Petition and Supporting Brief

11/10/10 82101-1 WSSC Order (Respondent's "Motion to Strike Improper Appendices to Petitioner's Brief and Corresponding Arguments" is granted. "Petitioner's Motion for the Testimony of Bruce Moran to Be Taken By Deposition" is denied. "Petitioner's Motion for Discovery of All Documents and Computer Programs Used to Generate Jury Pools in Pierce County" is denied.)

03/14/13 82101-1 WSSC Opinion denying personal restraint petition. Justice Owens authored the opinion for the Court. Chief Justice Madsen filed a concurring opinion in which Justices Gonzalez and Wiggins joined. *In re Yates*, 177 Wn.2d 1, 296 P.3d 872 (2013).

05/06/13 82101-1 WSSC Order (motion for reconsideration denied; motion to strike improper appendices denied)

05/10/13 82101-1 WSSC Certificate of Finality ($240,158.53 to be paid to OPD, $1,104.69 to Pierce County)

05/13/13 C13-0842 WDC Application for Writ of Habeas Corpus; Motion to Appoint Counsel; Request for Stay of Execution

05/14/13 C13-0842 WDC Order Granting Motion for Stay of Execution; Minute Entry (appointing Jeff Ellis and Todd Maybrown)

01/21/14 C13-0842 WDC First Amended Petition for Writ of Habeas Corpus; Petitioner's Motion for Stay and Abeyance

01/21/14 89792-1 WSSC Personal Restraint Petition [Second]

01/27/14 C13-0842 WDC Respondent's Submission of State Court Record Pursuant to CR 104(i)(1)

01/31/14 C13-0842 WDC Verification by Robert Yates

02/07/14 C13-0842 WDC Order Granting Petitioner's Motion for Stay and Abeyance (all proceedings stayed during pendency of Yates’s personal restraint petition in Cause No. 89792-1)

07/09/15 89792-1 WSSC Opinion dismissing second personal restraint petition as untimely. Justice Owens authored the opinion for a unanimous court. *In re Yates*, 183 Wn.2d 572, 353 P.3d 1283 (2015)

07/15/15 89792-1 WSSC Cost Bill

08/04/15 89792-1 WSSC Certificate of Finality

08/14/15 89792-1 WSSC Ruling on Cost Bill

08/13/15 C13-0842 WDC Order Lifting Stay of Proceedings

08/28/15 C13-0842 WDC Notice of Filing Respondent’s Supplemental Submission of State Court Record Pursuant to CR 104(i)(1)

09/24/15 89792-1 WSSC Supplemental Judgment (Costs of $542.00 are taxed in favor of Respondents; cost of $7.04 are taxed in favor of Washington State Office of Public Defense and against Petitioner)

09/11/15 C13-0842 WDC State Court Record (Volume XXXI filed by Respondent)

10/06/15 C13-0842 WDC Minute Entry (Respondent’s answer to petition due January 25, 2016; Petitioner’s reply to answer due April 25, 2016)

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

03/10/16 C13-0842 WDC Respondent’s Response to Petition for Writ of Habeas Corpus

06/03/16 C13-0842 WDC Petitioner’s Unopposed Motion for Extension of Time to File Reply

06/03/16 C13-0842 WDC Order Granting Petitioner’s Motion for Extension of Time to File Reply (Reply due 07/7/16)

07/07/16 C13-0842 WDC Petitioner’s Reply as to Claim 3; Motion for Discovery and to Expand the Record as to Claims 4, 9 and 14; Motion for Evidentiary Hearing as to Claims 1, 2, 6, 10, and 15; Motion to Extend Time to File Reply on Claims 5, 7, 8, and 11-13 and to Set a Status Conference

07/18/16 C13-0842 WDC Respondent’s Response to Motion to Extend Time to File Reply; Respondent’s Response to Motion for Discovery and to Expand the Record; Respondent’s Unopposed Motion for Extension of Time to Respond to Petitioner’s Motion for Evidentiary Hearing

07/20/16 C13-0842 WDC Order Granting Respondent’s Unopposed Motion to Extend Time; Order Granting Petitioner’s Motion to Extend Time until All Pending Motions/Issues Are Resolved and a Status Conference Has Been Conducted

07/20/16 C13-0842 WDC Status Conference Set for August 9, 2016 at 10:00am

07/20/16 C13-0842 WDC Petitioner’s Reply to Motion for Discovery and to Expand the Record

07/25/16 C13-0842 WDC Order Granting in Part and Denying in Part Petitioner’s Motion for Discovery and to Expand the Record (State is Ordered to Supplement the Record with the Proportionality Review Records by a Date to Be Determined at the August 9, 2016 Status Conference)

08/04/16 C13-0842 WDC Petitioner’s Motion for Reconsideration re: Order on Motion for Discovery

08/09/16 C13-0842 WDC Status Conference Held

08/19/16 C13-0842 WDC Order Denying Motion for Reconsideration

08/19/16 C13-0842 WDC Respondent’s Response to Motion for Evidentiary Hearing

08/31/16 C13-0842 WDC Respondent's Submission of State Trial Judge Reports

09/08/16 C13-0842 WDC Reply to Motion for Evidentiary Hearing; Declarations of Maybrown and Ellis

11/02/16 C13-0842 WDC Order Granting in Part and Denying in Part Petitioner’s Motion for Evidentiary Hearing

11/09/16 C13-0842 WDC Minute Order (setting Evidentiary Hearing for 3/6-8/2017)

11/16/16 C13-0842 WDC Agreed Order re Prehearing Discovery

11/29/16 C13-0842 WDC Order (granting Motion for Protective Order)

01/09/17 C13-0842 WDC Order Granting Agreed Motion Re: Service of Subpoenas

02/14/17 C13-0842 WDC Status Conference Held

02/23/17 C13-0842 WDC Petitioner’s Prehearing Brief

02/24/17 C13-0842 WDC Respondent’s Prehearing Brief

02/27/17 C13-0842 WDC Order for Writ of Habeas Corpus Ad Testificandum; Writ of Habeas Corpus Ad Testificandum

03/01/17 C13-0842 WDC Petitioner’s Reply to Respondent’s Prehearing Brief

03/06/17 C13-0842 WDC Evidentiary hearing held March 6 and 7, 2017

03/14/17 C13-0842 WDC Notice of Filing of Official Transcript of Evidentiary Hearing

05/15/17 C13-0842 WDC Petitioner’s Motion to Authorize Reliance on Evidence Presented at Evidentiary Hearing

05/26/17 C13-0842 WDC Respondent’s Response to Petitioner’s Motion to Authorize Reliance on Evidence

05/30/17 C13-0842 WDC Order granting Petitioner’s Motion to Authorize Reliance on Evidence

06/07/17 C13-0842 WDC Response by Petitioner (re: Order on Motion for Miscellaneous Relief Joint Proposed Briefing Schedule)

06/08/17 C13-0842 WDC Minute Order (Petitioner shall filed a consolidated brief on the merits no later than July 24, 2017. Respondent shall filed a response no later than September 11, 2017. Petitioner may file a reply no later than September 25, 2017. Petition for Writ of Habeas Corpus renoted for Court’s consideration on September 25, 2017.

07/24/17 C13-0842 WDC Petitioner’s Supporting Brief on the Merits

**09/11/17 C13-0842 WDC Response to Petitioner’s Supporting Brief on the Merits**