CAPITAL PUNISHMENT CASE STATUS REPORT

November 14, 2018

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| CAPITAL LITIGATION TEAM:Timothy N. Lang, Division ChiefPaul D. Weisser, Senior CounselJohn J. Samson, Senior CounselTina E. Bushaw, Paralegal | ROBERT W. FERGUSONAttorney GeneralState of WashingtonCorrections DivisionP.O. Box 40116Olympia, 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 6

ELMORE, Clark Richard 10

GENTRY, Jonathan Lee 13

GREGORY, Allen Eugene 17

SCHERF, Byron Eugene 21

SCHIERMAN, Conner Michael 23

YATES, Robert Lee, Jr. 25

 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

 **(Personal Restraint Petition, WSSC Cause #95018-1)**

 **Peter Alan Offenbecher Erin Curtis Newton**

 **Skellenger Bender PS Skellenger Bender PS**

 **Seattle, WA Seattle, WA**

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

 Todd Maybrown Peter Offenbecher

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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

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 (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 (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)

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

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

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.)

9/21/17 95018-1 WSSC Personal Restraint Petition; Memorandum in Support of Personal Restraint Petition; Declarations of Peter Offenbecher, Todd Maybrown, Richard Warner, Mark Larranaga

01/05/18 958018-1 WSSC Order (ordering State to file a brief addressing whether the PRP is procedurally barred)

04/23/18 958018-1 WSSC Joint Motion for Briefing Schedule

05/01/18 958018-1 WSSC Order on Motions (granting Joint Motion for Briefing Schedule. State’s brief addressing whether PRP is procedurally barred due July 16, 2018. Petitioner response brief due September 21, 2018)

07/13/18 95018-1 WSSC Motion for Extension of Time to File Brief on Procedural Bars

07/19/18 95018-1 WSSC Petitioner’s Non-Opposition to Respondent’s Motion for Extension of Time to File Brief on Procedural Bars

07/23/18 95018-1 WSSC Order on Motions (granting the Motion for Extension of Time to File Brief on Procedural Bars, and setting briefing schedule)

07/26/18 95018-1 WSSC State’s Brief re: Procedural Bars to Personal Restraint Petition

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 Jacqueline 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

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(Federal Habeas Corpus, USDC WDC #C17-0808)

**Michal Filipovic Jacueline K. Walsh**

**Mohammad A. Hamoudi Walsh & Larranga**

**Ashwin Cattamanchi 705 2nd Ave Ste 501**

**1601 5th Ave Ste 700 Seattle, WA 98104-1715**

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**(Personal Restraint Petition, WSCC #96395-9)**

**Michal Filipovic Jacueline K. Walsh**

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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

 (Federal Habeas Corpus, Usdc Wdc #C17-0808)

 **Robert W. Ferguson, Attorney General**

 **John J. Samson, Assistant Attorney General**

 **Mandy L. Rose, Assistant Attorney General**

 **Corrections Division**

 **P.O. Box 40116**

 **Olympia WA 98504-0116**

 **(360) 586-1445**

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)

10/07/13 12-9685 USSC Petition for writ of certiorari denied. *Davis v. Washington*, 571 U.S. 832 (2013)

10/11/13 80209-2 WSSC Mandate

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

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

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

05/18/17 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

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)

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

09/14/17 17-00808 WDC Petition for Writ of Habeas Corpus Under 28 U.S.C 2254; Motion to Stay and Abey

09/19/17 89590-2 WSSC Motion to Strike Improper Appendices to Petitioner’s Motion for Reconsideration and Corresponding Arguments; Motion to Strike Amici Briefs and Appendices

11/13/17 89590-2 WSSC Order on Motion for Reconsideration (Petitioner’s Motion for Reconsideration is denied)

11/14/17 17-00808 WDC Minute Order (Docket No. 15 will remain sealed)

11/17/17 89590-2 WSSC Certificate of Finality

11/27/17 17-00808 WDC Unopposed Motion to Stay Execution

11/29/17 17-00808 WDC Order (granting Motion for Stay of Execution)

01/31/18 17-00808 WDC Scheduling Order (Respondent will file the state court record by August 1, 2018; Petitioner may file a first amended petition on or before September 14, 2018)

03/12/18 17-00808 WDC Notice of Appearance (Mohammad A. Hamoudi, Attorney for Petitioner)

07/23/18 17-00808 WDC Stipulated Motion to Amend the Scheduling Order; Order (granting Stipulated Motion to Amend the Scheduling Order)

07/26/18 17-00808 WDC Notice of Filing Respondent’s Submission of State Court Record

09/10/18 17-00808 WDC Amended Petition for Writ of Habeas Corpus

10/05/18 96395-9 WSSC Personal Restraint Petition; Motion to Proceed IFP; Statement of Finances

**10/10/18 96395-9 WSSC Ruling on Motion (payment of filing is waived)**

**10/10/18 96395-9 WSSC Court Letter (acknowledging receipt of the PRP, Motion to Proceed IFP, and Statement of Finances; requesting verification to be filed by November 9, 2018; and setting briefing schedule for response and reply to PRP)**

**10/18/18 17-00808 WDC Order Requesting Joint Status Report (due 11/9/2018)**

**11/01/18 17-00808 WDC Unopposed Motion to Dismiss Petition in Its Entirety**

**11/05/18 17-00808 WDC Order Granting Petitioner’s Unopposed Motion to Dismiss Petition in Its Entirety**

**11/06/18 17-00808 WDC Civil Case Terminated**

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 (2000)

10/09/00 64095-8 WSSC Mandate issued

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)

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))

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 Granting Motion for Stay of Execution

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)

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)

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**

 **PO 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 (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

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

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 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)

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*, 1565 U.S. 963 (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)

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. [re: 09-99021] *Gentry v. Sinclair*, 571 U.S. 845 (2013)

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 [re: trial court’s denial of further DNA testing]

 89620-8 WSSC

12/02/13 12-10321 USSC Petition for rehearing denied. [re: 09-99021] *Gentry v. Sinclair*, 571 U.S. 845 (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).

02/05/14 C99-0289 WDC Order Granting Motion to Vacate Stay of Execution [re: Stay of Execution in C99-0289]

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

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

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

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

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)

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

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

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)

01/16/18 92315-9 WSSC Motion for a Partial Lift of Stay of Proceedings

01/23/18 92315-9 WSSC State’s Response to Motion to Lift Stay

02/08/18 92315-9 WSSC Order on Motion (granting Motion for a Partial Lift of Stay of Proceedings)

03/15/18 92315-9 WSSC Petitioner’s Supplemental Brief; Respondent’s Supplemental Brief

03/15/18 92315-9 WSSC Supplemental Appendices to Personal Restraint Petition

03/16/18 92315-9 WSSC Petitioner’s Motion to File Corrected Brief; Petitioner’s Supplemental Brief (corrected)

03/19/18 92315-9 WSSC Ruling on Motion (corrected Supplemental Brief accepted for filing)

03/21/18 92315-9 WSSC Petitioner’s Additional Authorities

**10/23/18 92315-9 WSSC State’s Motion to Lift Stay and Dismiss Petition**

**10/31/18 92315-9 WSSC Petitioner’s Response to State’s Motion to Lift Stay and Dismiss Petition**

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

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 **Kathleen Proctor, Deputy Prosecutor**

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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

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)

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 Brief of Amicus Curiae Fred T. Korematsu Center for Law and Equality in Support of Appellant

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

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

02/25/16 88086-7 WSSC Oral Argument

03/16/16 88086-7 WSSC Other Order (granting a special hearing before 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; 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

09/14/17 88086-7 WSSC Other Ruling (Commissioner's Supplemental Interrogatories (by Narda Pierce as Acting Deputy Commissioner). Lists supplemental interrogatories 34-39. Answers to these interrogatories should be received by the court and counsel of record for the parties by September 29, 2017. Upon consideration of answers to interrogatories, a final report will be submitted to the court for such weight as each Justice determines to accord it in deciding the matter.

09/29/17 88086-7 WSSC Response to Commissioner’s Supplemental Interrogatories

11/21/17 88086-7 WSSC Order (Order from Court regarding the Commissioner’s Findings and Report Relating to Parties’ Expert Reports)

12/01/17 88086-7 WSSC Letter (Court has requested that Professor Katherine Beckett, expert for appellant Allen Eugene Gregory, submit her updated data set to the court)

12/15/17 88086-7 WSSC Other Filing (updated version of the “WA Death Penalty Adults 1981-2014” excel spreadsheet that was filed with the court on May 27, 2016)

01/22/18 88086-7 WSSC Supplemental Brief of Appellant Allen Gregory; Brief of Social Scientists and Researchers Catherine Grasso, Jeffrey Fagan, et al., and Amici Curiae in Support of Appellant

01/22/18 88086-7 WSSC Final Codebook (revised January 2018-Beckett Report); Excel Data File; Letter (cover letter for Final Codebook and Excel Data File)

01/22/18 88086-7 WSSC Supplemental Brief of Amici Curiae, 56 Former and Retired Washington State Judges, a Former U.S. Attorney, ACLU Foundation, ACLU of Washington, Church Council of Greater Seattle, Catholic Mobiling Network, Faith Action Network, Friends Committee on Washington Public Policy, League of Women Voters of Washington, Murder Victims Families for Reconciliation, Two Law School Professors, Washington Association of Criminal Defense Lawyers, and Washington Defender Association

01/22/18 88086-7 WSSC Supplemental Brief of Amicus Curiae Washington Coalition to Abolish the Death Penalty

10/11/18 88086-7 WSSC Opinion (holding unanimously that Washington’s death penalty laws are unconstitutional as administered; therefore, all death sentences are converted to life imprisonment without the possibility of parole). Chief Justice Fairhurst wrote the lead opinion and was joined by Justices Wiggins, Gonzalez, Gordon McCloud, and Yu, with Justice Gonzalez concurring in the result only. Justice Johnson authored a separate concurring opinion in which Justices Owens, Stephens, and Madsen joined. The Court expressly declined to reconsider Gregory’s challenges to the guilt phase of his trial. *State v. Gregory*, \_\_ Wn.2d. \_\_, 427 P.3d 621 (2018).

**11/07/18 88086-7 WSSC Mandate**

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

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PROSECUTING ATTYS: Mark Roe, Prosecuting Attorney

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

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

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

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

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

11/03/15 88906-6 WSSC Appellant’s Reply Brief

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

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

11/10/16 88906-6 WSSC Oral Argument

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

12/08/17 88906-6 WSSC Order (by order dated November 17, 2016, this case was stayed pending the Court's determination in Supreme Court No. 88086-7, *State of Washington v. Allen Eugene Gregory*, of issues related to the Beckett report. The "Findings and Report Relating to Parties' Expert Reports" having been filed in Supreme Court No. 88086-7, *State of Washington v. Allen Eugene Gregory*, and the Court having determined that the parties and amicus in the *Gregory* case may file supplemental briefs addressing the report, the following order is hereby entered: the stay of this case is lifted. The parties and any amicus that have already filed briefs in this case may serve and file supplemental briefs addressing the report by January 22, 2018. Any other amicus that wishes to file a brief addressing the report must file a motion seeking permission pursuant to RAP 10.6 by December 21, 2017)

01/22/18 88906-6 WSSC Brief of Appellant on Commissioner’s Report and Findings Regarding the Beckett Report

01/22/18 88906-6 WSSC Supplemental Brief of Respondent on Expert Reports

**11/08/18 88906-6 WSSC Opinion (conviction affirmed; death sentence vacated based on holding in *State v. Gregory*). Justice Johnson authored the opinion of the Court. Justice Gonzalez, joined by Justice Yu, wrote a separate concurring opinion**

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

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

06/01/10 84614-6 WSSC Notice of Appeal

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

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

04/12/18 84614-6 WSSC Opinion (affirming convictions and death sentence. Justices Gordon McCloud, Yu, Madsen, and Stephens, and Chief Justice Fairhurst all issued separate opinions. *State v. Schierman*, \_\_\_ Wn.2d \_\_\_, 415 P.3d 106 (2018))

04/19/18 84614-6 WSSC Memorandum (advising Justice Madsen has requested a minor change be made to her concurring opinion)

04/23/18 84614-6 WSSC Order on Motions (in accordance with SPRC 2, Gregory Link is appointed co‑counsel to represent Conner M. Schierman effective April 23, 2018)

04/25/18 84614-6 WSSC Order on Motions (granting Appellant’s Motion for Extension of Time to File a Motion for Reconsideration)

05/03/18 84614-6 WSSC Order on Motions (Appellant’s Motion to Clarify the Scope of Relief RAP 17.1, denied without prejudice)

06/14/18 84614-6 WSSC Motion for Reconsideration

07/12/18 84614-6 WSSC Motion for Extension of Time to File an answer to the motion for reconsideration)

07/13/18 84614-6 WSSC Order (granting respondent’s motion for extension of time to file an answer to the motion for reconsideration)

08/16/18 84614-6 WSSC Answer to Defendant’s Motion for Reconsideration and State’s Motion to Strike

08/17/18 84614-6 WSSC Motion for Leave to File a Reply to State’s Answer

08/21/18 84614-6 WSSC Order on Motion (granting motion for leave to file reply to State’s answer)

08/21/18 84614-6 WSSC Reply to State’s Answer

**10/16/18 84614-6 WSSC Order on Motion for Reconsideration (denying appellant’s motion for reconsideration and the request for clarification and reargument, and denying the State’s motion to strike. Notwithstanding the entry of this Order, the court in *State v. Gregory* directed all death sentences be converted to life imprisonment. Further action in this case is stayed until *State v. Gregory* mandates)**

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

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PROSECUTING ATTYS: Gerald Horne, Prosecuting Attorney

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

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

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

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 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)

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 **Corrections Division**

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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).

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)

09/11/08 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

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).

05/10/13 82101-1 WSSC Certificate of Finality

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]

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)

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

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

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

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

07/25/16 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)

08/31/16 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

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

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

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

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

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

09/25/17 C13-0842 WDC Reply by Petitioner to Response

02/05/18 C13-0842 WDC Order to Show Cause (directing all parties to show cause why this Court should not stay the habeas petition for six months while the Washington legislature considers the bill regarding abolition of death penalty)

02/20/18 C13-0842 WDC Petitioner’s Response to Order to Show Cause

02/26/18 C13-0842 WDC Respondent’s Response to Order to Show Cause

03/09/18 C13-0842 WDC Minute Order (re Order to Show Cause (given State of Washington has not signed into law any change in the State’s death penalty statute and procedures, this Court will continue to consider Petitioner’s habeas petition in due course)

05/25/18 C13-0842 WDC Order Granting Petitioner’s Request for Stay and Abeyance (the federal habeas proceeding is stayed during the pending of Yates’ current state-court challenge to the validity of his convictions in Spokane County Superior Court Cause No. 00-1-01153-0, which are at issue in Claim 3 of Yates’ habeas petition. Following the conclusion of the state-court proceedings, Petitioner shall, within 30 days, bring a motion to lift this stay)

**10/12/18 C13-0842 WDC Minute Order (directing parties to file a Joint Status Report by October 26, 2018)**

**10/25/18 C13-0842 WDC Status Report (filed by Petitioner)**

**10/26/18 C13-0842 WDC Status Report (filed by Respondent)**