

CAPITAL PUNISHMENT CASE STATUS REPORT

December 10, 2013

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INTRODUCTION

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

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KEY TO COURT ABBREVIATIONS

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

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
<u>NAME:</u>		CROSS, Dayva Michael D.O.B.: September 19, 1959 Race: Caucasian
<u>DATE OF CRIME:</u>		March 6, 1999
<u>PLACE OF CRIME:</u>		King County
<u>BRIEF FACTS:</u>		Dayva Michael Cross pleaded guilty to three counts of aggravated first degree murder for the stabbing deaths of his wife, Anouchka Baldwin, and two stepdaughters, Amanda Baldwin and Salome Holly. The aggravating circumstances were that there was more than one victim and the murders were part of a common scheme or plan or the result of a single act of the person. <i>State v. Cross</i> , King County Cause 99-1-02212-9.
<u>DATE OF GUILTY PLEA:</u>		October 23, 2000
<u>SPECIAL SENTENCING:</u>		May 7, 2001
<u>JUDGMENT AND SENTENCE:</u>		King County Superior Court Cause No. 99-1-02212-9 June 22, 2001
<u>TRIAL JUDGE:</u>		Honorable Joan DuBuque
<u>DEFENSE ATTYS:</u>		Mark Larranaga Richard Warner Seattle, WA
<u>PROSECUTING ATTYS:</u>		Norm Maleng, Prosecuting Attorney Don Raz, Senior Deputy Prosecutor Tim Bradshaw, Deputy Prosecutor King County Courthouse 516 Third Avenue, Suite W554 Seattle, WA 98104-2362 (206) 296-9000
<u>APPELLANT'S ATTYS:</u>		(Direct Appeal, WSSC Cause #71267-1) Todd Maybrown Seattle, WA Kathryn Ross Mukilteo, WA
<u>PETITIONER'S ATTYS:</u>		(Personal Restraint Petition, Washington Supreme Court #79761-7) TODD MAYBROWN ALLEN HANSEN & MAYBROWN 600 UNIVERSITY ST., SUITE 3020 SEATTLE, WA 98101-4105 (206) 447-9681 JAMES LOBSENZ CARNEY BADLEY SPELLMAN 701 5TH AVENUE, SUITE 3600 SEATTLE, WA 98104-7010 (206) 622-8020
<u>RESPONDENT'S ATTYS:</u>		DANIEL T. SATTERBERG, PROSECUTING ATTORNEY Timothy Bradshaw, Deputy (withdrew 01/24/03) DONALD RAZ, DEPUTY JAMES WHISMAN, DEPUTY RANDI J. AUSTELL, DEPUTY

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
06/29/01	71267-1 WSSC	Notice of Judgment and Sentence
06/22/04	71267-1 WSSC	Oral argument held
03/30/06	71267-1 WSSC	Opinion (affirming conviction and sentence of death). Majority opinion authored by Justice Chambers. Chief Justice Alexander filed a concurring opinion. Justice Madsen, joined by Justices Charles Johnson, Sanders, and Owens, dissented. <i>State v. Cross</i> , 156 Wn.2d 580, 132 P.3d 80 (2006).
04/06/06	71267-1 WSSC	Cost Bill [\$128,781 to be paid to OPD, \$706.18 to King County]
11/06/06	06-6333 USSC	Petition for Writ of Certiorari denied. <i>Cross v. Washington</i> , 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.
07/10/08	79761-7 WSSC	Order (denying Respondent's Motion for Judicial Determination of Petitioner's Competency, Respondent's RAP 16.26 Motion for Discovery, and Petitioner's Motion for Oral Argument)
10/13/08	79761-7 WSSC	Response to Personal Restraint Petition
11/10/08	79761-7 WSSC	Order (Respondent's Second Motion for Discovery is granted; Petitioner's Motion for Oral Argument is denied; Respondent's Motions to Strike Declarations of Boerner, Robinson, and Torres are denied)
03/06/09	79761-7 WSSC	Order on Petitioner's Renewed Motion for Discovery re: Lethal Injection Claims

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
03/17/09	79761-7 WSSC	Order (DOC's motion for a protective order is granted on a temporary basis only. This temporary protective order will remain in effect pending further order of the Court)
04/03/09	79761-7 WSSC	Order (Petitioner's motion for oral argument is granted only on the <i>Alford</i> plea issues. Oral argument will be heard on June 25, 2009. All other issues in this case are stayed pending resolution of the Alford plea issues)
05/11/09	79761-7 WSSC	Supplemental Brief of Petitioner
06/03/09	79761-7 WSSC	Brief of Amicus Curiae Washington Association of Criminal Defense Lawyers
06/08/09	79761-7 WSSC	Supplemental Brief of Respondent Re: <i>Alford</i> Plea of Guilty
06/15/09	79761-7 WSSC	Response to Brief of Amicus Curiae Washington Association of Criminal Defense Lawyers
06/19/09	79761-7 WSSC	Petitioner's Supplemental Reply Brief Re: <i>Alford</i> Plea of Guilty
06/25/09	79761-7 WSSC	Oral argument held
07/08/09	79761-7 WSSC	Order (the Court denies relief based on the <i>Alford</i> 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.)
11/06/09	79761-7 WSSC	Order (Respondent's motion to lift the stay is granted in part and denied in part. The motion is denied with respect to consideration of the legality of Washington's lethal injection protocol. The motion to lift the stay is granted with respect to all other claims. The Respondent's motion for immediate dissemination of discovery is granted in part.)
12/08/09	79761-7 WSSC	Reply Brief in Support of Personal Restraint Petition
02/12/10	79761-7 WSSC	Order (Petitioner's motion for the appointment of Maria Fernanda Torres is denied but Ms. Torres may provide representation under the supervision of death penalty qualified counsel at public expense. The Respondent's motion for a deadline is granted. Petitioner has 30 days from entry of this order to comply with this Court's November 6, 2009, discovery order. The Respondent's motion for 60 days from receipt of discovery to file any additional relevant briefing on the ineffective assistance of counsel claims, and the Petitioner's motion for 60 days to respond, are granted.)
06/25/10	79761-7 WSSC	Order (The Respondent's motion to compel production is deferred pending further consideration of this court. Within 30 days of this order, the Petitioner shall provide this court with: (1) copies of any disputed documents, which shall be filed under seal, for this court's in camera review; and (2) a brief explaining why said documents should not be disclosed. The Respondent's request to clarify this court's November 10, 2008 order is denied without prejudice to a more specific future motion. The Respondent's motion for an extension of time is granted.)
09/27/10	79761-7 WSSC	Order (Both the Respondent's motion to compel production of the 12 documents submitted for the Court's in camera review and its motion for compliance are denied.)
05/02/11	79761-7 WSSC	Petitioner's Reply Brief to State's Supplemental Response to PRP (filed under seal); Second Declaration of Richard Warner; Second Declaration of Mark Larranaga; Declaration of Teresa A. McMahill
11/08/11	79761-7 WSSC	Order (granting Respondent's motion for permission to file discovery documents and temporarily sealing said documents subject to further order of the Court)

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
07/15/13	79761-7 WSSC	Petitioner's Statement of Additional Authorities
09/05/13	79761-7 WSSC	Order (Former justices Chambers, Alexander, and Sanders are appointed justices pro tempore in regards to the issues heard at oral argument)
09/26/13	79761-7 WSSC	Opinion (holding that a capital sentence can be predicated on an <i>Alford</i> 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. <i>In re Cross</i> , 178 Wn.2d 519, 309 P.3d 1186 (2013).
10/31/13	79761-7 WSSC	Order (Hon. Lisa Worswick is appointment as a Supreme Court Justice Pro Tempore for all proceedings having to do with the resolution of this case.)

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
<u>NAME:</u>		DAVIS, Cecil Emile D.O.B.: September 1, 1959 Race: Black
<u>DATE OF CRIME:</u>		January 25, 1997
<u>PLACE OF CRIME:</u>		Pierce County
<u>BRIEF FACTS:</u>		Cecil Emile Davis was convicted of one count of aggravated first degree murder for the suffocation/asphyxiation murder of 65-year-old Yoshiko Couch using a poisonous chemical ("Goof-Off"/Xylene), after burglarizing her home, robbing her, and raping her. The aggravating circumstance was that the murder was committed in the course of and or furtherance of the crimes of Burglary in the First Degree or Burglary in the Second Degree, Robbery in the First Degree or Robbery in the Second Degree, Rape in the First Degree and/or Rape in the Second Degree. <i>State v. Davis</i> , Pierce County Cause 97-1-00432-4.
<u>DATE OF CONVICTION:</u>		February 6, 1998
<u>SPECIAL SENTENCING:</u>		February 10-12, 1998 May 15, 2007
<u>JUDGMENT AND SENTENCE:</u>		Pierce County Superior Court Cause No. 97-1-00432-4 February 23, 1998, May 18, 2007
<u>TRIAL JUDGE:</u>		Honorable Frederick W. Fleming
<u>DEFENSE ATTYS:</u>		Ronald Ness John L. Cross Port Orchard, WA Julia Lindstrom Lloyd Alton, Jr. Tacoma, WA
<u>PROSECUTING ATTYS:</u>		Gerald Horne, Prosecuting Attorney John W. Ladenburg (Former Prosecuting Attorney) John M. Neeb, Deputy Prosecutor (Withdraw 01/26/00) John Hillman, Deputy Prosecutor (Former Prosecuting Attorney) Gerald T. Costello, Deputy Prosecutor Pierce County Prosecutor's Office 930 Tacoma Avenue South, Room 946 Tacoma, WA 98402-2171
<u>APPELLANT'S ATTYS:</u>		(Direct Appeal, WSSC Cause #66537-1) Judith Mandel Port Orchard, WA Ronald D. Ness Port Orchard, WA (Direct Appeal, WSSC Cause #80209-2) Eric Broman (Withdraw 1/15/09) Eric Nielsen Nielsen Broman & Koch LLC 1908 E. Madison Street Seattle, WA 98122-2842 (206) 623-2488 David Koch Nielsen Broman & Koch LLC 1908 E. Madison Street Seattle, WA 98122-2842 (206) 623-2488

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
01/19/11	80209-2 WSSC	Brief of Amici Curiae (1) American Civil Liberties Union of Washington, (2) Washington Association of Churches, (3) Lutheran Public Policy of Washington State, and (4) Disability Rights Washington in Support of Appellant's Appeal filed
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. <i>State v. Davis</i> , 175 Wn.2d 287, 290 P.3d 43 (2012).
10/08/12	80209-2 WSSC	Motion for Reconsideration
01/10/13	80209-2 WSSC	Order (motion for reconsideration denied)
04/05/13	12-9685 USSC	Petition for Writ of Certiorari; Motion for Leave to Proceed <i>In Forma Pauperis</i>
06/10/13	12-9685 USSC	Brief of Respondent Washington in Opposition
06/14/13	12-9685 USSC	Reply of Petitioner
06/20/13	12-9685 USSC	Distributed for Conference of September 30, 2013
10/07/13	12-9685 USSC	Petition for writ of certiorari denied. <i>Davis v. Washington</i> , 134 S. Ct. 62 (2013).
10/11/13	80209-2 WSSC	Mandate (Costs in the amount of \$61.82 shall be awarded to the Respondent, Pierce County Prosecuting Attorney's Office and \$129,243.11 shall be awarded to the Washington State Office of Public Defense, to be paid by Petitioner, Cecil Davis)
11/21/13	97-1-00432-4	Death Penalty 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
11/26/13	89590-2 WSSC	Order (Roger A. Hunko and Paula Olson are appointed as counsel and co-counsel for Cecil E. Davis; the personal restraint petition is due for filing 180 days from the effective date of the appointment of counsel; the response to the personal restraint petition is due for filing 120 days after the personal restraint petition is filed; the reply to the response is due for filing 60 days after the response is served upon the petitioner.)
11/26/13	89590-2 WSSC	Order (Payment of the filing fee for filing a death penalty personal restraint petition is waived.)
12/06/13	89590-2 WSSC	Defendant's First Motion for Stay Of Execution
12/09/13	89590-2 WSSC	State's Response to First Motion for Stay of Execution

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
<u>NAME:</u>	ELMORE, Clark Richard (aka James Elmore aka James Lee Dickey) D.O.B.: November 17, 1951 Race: White	
<u>DATE OF CRIME:</u>	April 17, 1995	
<u>PLACE OF CRIME:</u>	Whatcom County	
<u>BRIEF FACTS:</u>	Clark Richard Elmore pleaded guilty to one count of aggravated first degree murder of Christy Onstad, the 14-year-old daughter of Elmore's live-in girlfriend. The two aggravating circumstances were (1) the murder was in the course of and in flight from Rape in the Second Degree, and (2) the murder was committed to conceal the commission and perpetrator of the crime. <i>State v. Elmore</i> , Whatcom County Cause 95-1-00310-1.	
<u>DATE OF GUILTY PLEA:</u>	July 6, 1995	
<u>SPECIAL SENTENCING:</u>	March 12, 1996	
<u>JUDGMENT AND SENTENCE:</u>	Whatcom County Superior Court Cause No. 95-1-00310-1 May 3, 1996	
<u>TRIAL JUDGE:</u>	Honorable David Nichols	
<u>DEFENSE ATTYS:</u>	John Komorowski Douglas Hyldahl Bellingham, WA	
<u>PROSECUTING ATTYS:</u>	David S. McEachran, Prosecuting Attorney Whatcom County Prosecutor's Office Whatcom County Courthouse 311 Grand Avenue Bellingham, WA 98225 (360) 676-6784	
<u>APPELLANT'S ATTYS:</u>	(Direct Appeal, Washington Supreme Court #64085-8) Michael P. Iaria Seattle, WA Rita Griffith Seattle, WA Jon Ostlund (06/17/96) Bellingham, WA	
	Meredith Martin Rountree Austin, TX Charlotte Cassady (Withdrew 03/06/98) Mobile, AL	
<u>PETITIONER'S ATTYS:</u>	(Personal Restraint Petition, Washington Supreme Court #70233-1) Jeffrey E. Ellis Seattle, WA Meredith Martin Rountree Austin, TX	

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
		(Federal Habeas Corpus, USDC WDC #C08-0053, 9 th Cir #12-99003)
		JEFFREY E. ELLIS
		LAW OFFICE OF ALSEPT & ELLIS
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		ROBERT GOMBINER
		LAW OFFICES OF GOMBINER
		119 1ST AVENUE, SUITE 500
		SEATTLE, WA 98104
		(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
RONDA D. LARSON, ASSISTANT ATTORNEY GENERAL
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(360) 586-1445

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

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
05/13/96	64085-8 WSSC	Notice of Appeal
11/19/98	64085-8 WSSC	Oral argument held
10/07/99	64085-8 WSSC	Opinion affirming conviction and death sentence and granting State's motion to strike Appellant's "Social History". Justice Talmadge authored the opinion for the Court. Justice Sanders dissented. <i>State v. Elmore</i> , 139 Wn.2d 250, 985 P.2d 289 (1999)
10/02/00	99-9587 USSC	Petition for Writ of Certiorari denied, <i>Elmore v. Washington</i> , 531 U.S. 837, 121 S. Ct. 98, 148 L. Ed. 2d 57 (2000)
10/09/00	64095-8 WSSC	Mandate issued
10/10/00	70233-1 WSSC	Motion for Appointment of Counsel and for Stay of Execution Pursuant to Rules 16.24 and 16.25 of the Rules of Appellate Procedure
10/31/00	95-1-00310-1	Death Warrant (setting execution for November 28, 2000)
11/07/00	70233-1 WSSC	Notation Order (motion for stay of execution is granted)
06/29/01	70233-1 WSSC	Petitioner's Personal Restraint Petition and Brief in Support

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
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. <i>In re Elmore</i> , 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
03/05/08	70233-1 WSSC	Ruling on Cost Bill (\$245,662.53 to be paid to OPD, \$496.00 to Whatcom County); Certificate of Finality)
04/22/08	C08-0053 WDC	First Amended Petition for Writ of Habeas Corpus
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)
09/03/13	12-99003 9 CIR	Appellant's Opening Brief; Motion for Permission to File Overlength Opening Brief
09/04/13	12-99003 9 CIR	Response to Motion to File Over-Length Brief
09/23/13	12-99003 9 CIR	Order (motion for leave to file oversize brief granted in part; within 28 days Appellant shall file a revised brief not to exceed 26,000 words; answering brief due 60 days after service)

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
10/21/13	12-99003 9 CIR	Appellant's Opening Brief

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
<u>NAME:</u>		GENTRY, Jonathan Lee D.O.B.: August 7, 1956 Race: Black
<u>DATE OF CRIME:</u>		June 13, 1988
<u>PLACE OF CRIME:</u>		Kitsap County
<u>BRIEF FACTS:</u>		Jonathan Gentry was convicted of the aggravated first degree murder of Cassie Holden. The aggravating circumstance was that the murder was committed to protect or conceal the identity of the person committing the crime. <i>State v. Gentry</i> , Kitsap County Superior Court Cause No. 88-1-00395-3.
<u>DATE OF CONVICTION:</u>		June 26, 1991
<u>SPECIAL SENTENCING:</u>		July 2, 1991
<u>JUDGMENT AND SENTENCE:</u>		Kitsap County Superior Court Cause No. 88-1-00395-3 July 22, 1991
<u>TRIAL JUDGE:</u>		Honorable Terence Hanley
<u>DEFENSE ATTYS:</u>		Frederick D. Leatherman, Jr. Jeffery P. Robinson
<u>PROSECUTING ATTYS:</u>		Russell Hauge, Prosecuting Attorney C. Danny Clem (former Prosecuting Attorney) Irene K. Asai, Deputy Prosecuting Attorney Brian T. Moran, Deputy Prosecuting Attorney
<u>APPELLANT'S ATTYS:</u>		(Direct Appeal, Washington Supreme Court #58415-0) Michael P. Iaria Seattle, WA Frederick D. Leatherman, Jr. Seattle, WA
<u>PETITIONER'S ATTYS:</u>		(Personal Restraint Petition, Washington Supreme Court #62677-4) (Federal Habeas Corpus, USDC WDC #C99-0289L, 9 th Cir # 09-99021, USSC #12-10321) RITA J. GRIFFITH GRIFFITH & COLE 1305 NE 45TH STREET, SUITE 205 SEATTLE, WA 98105 (206) 547-1742 Brian Tsuchida (withdrew on 5/13/08) Seattle, WA Scott Engelhard (withdrew on 5/1/09) Seattle, WA 98104 TIMOTHY FORD MACDONALD HOAGUE & BAYLESS 705 SECOND AVE, SUITE 1500 SEATTLE, WA 98104-1745 (206) 622-1604 Meredith Rountree (withdrew on 5/1/09) Austin, TX
<u>RESPONDENT'S ATTYS:</u>		(Personal Restraint Petition, Washington Supreme Court #62677-4) Russell Hauge, Prosecuting Attorney Randy Sutton, Deputy Pamela B. Loginsky, Special Deputy Washington Association Of Prosecuting Attorneys

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
<u>RESPONDENT'S ATTYS:</u>		(Federal Habeas Corpus, USDC WDC #C99-0289L, 9 th 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

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
08/08/91	58415-0 WSSC	<i>State v. Gentry</i> ; Notice of Appeal
11/09/93	58415-0 WSSC	Oral argument held
01/06/95	58415-0 WSSC	Opinion (affirming conviction and sentence of death). Majority opinion authored by Justice Andersen. Justices Utter, Johnson and Madsen dissented. <i>State v. Gentry</i> , 125 Wn.2d 570, 888 P.2d 1105 (1995)
10/02/95	94-9582 USSC	Petition for Writ of Certiorari denied. <i>Gentry v. Washington</i> , 516 U.S. 843, 116 S. Ct. 131, 133 L. Ed. 2d 79 (1995)
10/05/95	58415-0 WSSC	Mandate issued
11/02/95	88-1-00395-3	Death Warrant (setting execution for December 5, 1995)
11/14/95	58415-0 WSSC	Order staying execution date of December 5, 1995 pending certificate of finality or further order of the court
12/15/95	62677-4 WSSC	Order appointing counsel
02/18/99	62677-4 WSSC	Opinion denying personal restraint petition. Justice Talmadge authored the opinion for the Court. Justice Sanders, joined by Justice Johnson, dissented in part. <i>In re Gentry</i> , 137 Wn.2d 378, 972 P.2d 1250 (1999)
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
02/11/00	C99-0289 WDC	Respondent's Amended Answer and Memorandum of Authorities

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
07/12/01	C99-0289 WDC	Order Regarding Exhaustion of Claims (the following claims presented were in fact exhausted in the Washington courts and may be considered here: (1) the <i>Brady/Napue</i> claim regarding Brian Dyste; (2) the victim impact statement claims; (3) the claim regarding the admission of petitioner's previous conviction; and (4) the juror exclusion claim. The following claims were unexhausted and cannot be considered here: (1) the <i>Brady/Napue</i> claims regarding Leonard Smith, Timothy Hicks, and detective misconduct; and (2) the ineffective assistance of counsel claims.)
08/30/01	C99-0289 WDC	Order for Clarification of Exhaustion Order; Order Deferring Motion to Conduct Discovery
07/02/03	C99-0289 WDC	Order Regarding Procedural Default (the claims identified as unexhausted in the Court's Order of Clarification [08/30/01] are now procedurally barred; directing the parties to file memoranda regarding cause and prejudice)
03/26/04	C99-0289 WDC	Order Regarding Cause and Prejudice (reconsidering <i>sua sponte</i> , and reversing, the Court's prior decision that the <i>Brady/Napue</i> claims concerning Timothy Hicks and Detectives Wright and Wagner are unexhausted and procedurally defaulted; reserving ruling as to whether Gentry has shown cause for his default regarding the Leonard Smith claims pending an evidentiary hearing; concluding that Gentry has failed to show cause to excuse his default of the penalty phase ineffective assistance claim; denying Gentry's motion to strike)
08/03/05	C99-0289 WDC	Order Regarding Discovery and Evidentiary Hearing (granting Petitioner's request to conduct depositions of Brian Moran, Timothy Hicks, Brian Dyste, Detective Wright, Detective Wagner, and CCO Karen Adams; denying Respondent's request for depositions; scheduling evidentiary hearing on Petitioner's <i>Brady/Napue</i> claims)
03/6-9/06	C99-0289 WDC	Evidentiary hearing held
03/15/06	C99-0289 WDC	Minute Order (the Court has conducted an in camera review of witness Jan Mahan's taped interview and written notes from her subsequent telephone conversation with Brian Dyste. The Court concludes that the <i>Gentry</i> case is never mentioned or referenced in these materials and that they have no bearing on this proceeding).
08/28/06	C99-0289 WDC	Order on Motion for Summary Judgment (denying Petitioner's motion for summary judgment re: claim A [dismissal of juror for cause])
09/04/08	C99-0289 WDC	Order on Petition for Habeas Relief Based on <i>Brady</i> and <i>Napue</i> Violations (denying habeas relief).
09/05/08	C99-0289 WDC	Order on <i>Brady/Napue</i> Claims Regarding Leonard Smith (denying habeas relief); Order Denying Petitioner's Motion for Evidentiary Hearing on Denial of Effective Assistance of Counsel Due to Failure to Investigate
09/15/08	C99-0289 WDC	Order Granting Respondent's Motion for Summary Judgment, Denying Petitioner's Cross-Motion for Summary Judgment, and Order Denying Amended Habeas Petition. <i>Gentry v. Sinclair</i> , 576 F. Supp. 2d 1130 (2008).
03/23/09	C99-0289 WDC	Order Denying Motion for Reconsideration. <i>Gentry v. Sinclair</i> , 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

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
05/26/09	C99-0289 WDC	Notice of Appeal
10/02/09	C99-0289 WDC	Order Granting Certificate of Appealability
12/30/09	84039-3 WSSC	Personal Restraint Petition [Second] [challenge to conditions of confinement]; Declarations of Jennifer Davis and Timothy Ford
03/02/10	84039-3 WSSC	Response of the Department of Corrections
04/05/10	84039-3 WSSC	Petitioner's Reply to Response of the Department of Corrections
12/30/10	84039-3 WSSC	Opinion denying personal restraint petition. Chief Justice Madsen authored the opinion for the Court. Justice Stephens, joined by Justice Sanders, dissented. <i>In re Gentry</i> , 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]; Motion for Leave to Proceed <i>In Forma Pauperis</i> ; Affidavit in Support of Motion to Proceed on Appeal <i>In Forma Pauperis</i>
07/25/11	88-1-00395-3	Order Granting Post-Conviction DNA Testing
09/01/11	09-99021 9 CIR	Order (directing the parties to file supplemental briefs, addressing the following issues: (1) Did Gentry in the district court and in this Court properly raise a claim that he was prosecuted, convicted, and sentenced to death based upon his race and, if properly raised, does the claim have merit?; and (2) What impact, if any, does <i>Cullen v. Pinholster</i> , 131 S. Ct. 1388 (2011), have on this appeal?)
09/15/11	10-10814 USSC	Respondent's Brief in Opposition
09/23/11	10-10814 USSC	Reply to Brief in Opposition
09/30/11	09-99021 9 CIR	Supplemental Brief of Respondent-Appellee
10/10/11	86585-0 WSSC	Personal Restraint Petition [Third]; Declaration of Timothy K. Ford; Motion for Appointment of Counsel; Statement of Finances Regarding Personal Restraint Petition
10/17/11	10-10814 USSC	Order denying petition for writ of certiorari [re 84039-3]. <i>Gentry v. Sinclair</i> , 132 S. Ct. 453 (2011).
10/21/11	09-99021 9 CIR	Supplemental Brief of Appellant
11/17/11	09-99021 9 CIR	Oral argument held
02/09/12	58415-0 WSSC	Order (Motion for order extending release of exhibits is granted; exhibits due back to WSSC on June 30, 2012)
04/05/12	86585-0 WSSC 58415-0 WSSC	Response to Personal Restraint Petition and Motion to Reconsider Appeal

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
05/18/12	88-1-00395-3	Order Permitting Release of Trial Exhibit 69 for Preliminary Inspection by Microscopists
05/30/12	58415-0 WSSC	Order (The motion for order modifying order approving release of evidence is granted upon the conditions as specifically specified in the Grounds For Relief portion of the "Motion For Order Modifying Order Approving Release Of Evidence".)
06/07/12	86585-0 WSSC	Order (The Motion for Appointment of Counsel is granted and Tim Ford and Rita Griffith are appointed as counsel for the Petitioner in this matter.)
08/09/12	86585-0 WSSC	Petitioner/Appellant's Reply Brief
08/17/12	58415-0 WSSC	Stipulated Motion for Order Extending Release of Exhibits to the Washington State Crime Laboratory
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. <i>Gentry v. Sinclair</i> , 693 F.3d 867 (9th Cir. 2012).
09/28/12	09-99021 9 CIR	Petition for Rehearing and Rehearing En Banc
10/05/12	58415-0 WSSC	Order (stipulated motion for order extending release of exhibits is granted)
10/26/12	86585-0 WSSC 58415-0 WSSC	Amended Order (appointment Hon. Lisa Worswick as a pro tem justice in this case for all proceedings having to do with the resolution of this case and #58415-0 - <i>State v. Gentry</i>)
12/13/12	86585-0 WSSC	Order (The State's motion to strike portions of the Petitioner's "Motion to Set Oral Argument, or to Remand for Supplementation of the Record or a Reference Hearing, in Light of State v. Davis" is granted. The Petitioner's motion to set oral argument is denied. The Petitioner's motion to remand for supplementation of the record or for a reference hearing is denied as moot based on the granting of the State's motion to strike. The remaining issues will be considered by the court without oral argument and an opinion will be issued in due course.)
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). <i>Gentry v. Sinclair</i> , 705 F.3d 884 (9th Cir. 2013)
01/31/13	58415-0 WSSC	Order (That the stipulated motion for order extending release of exhibits to the Washington State Crime Laboratory until June 30, 2013, is granted)
04/30/13	86585-0 WSSC	Order (Hon. James Verellen is appointed as a Supreme Court Justice pro tem for all proceedings having to do with the resolution of this case.)
05/15/13	12-10321 USSC	Petition for Writ of Certiorari; Motion for Leave to Proceed In Forma Pauperis
06/04/13	86585-0 WSSC	Amicus Curiae Brief of the NAACP Legal Defense & Educational Fund, Inc.
06/06/13	86585-0 WSSC	Brief of Amici Curiae American Civil Liberties Union and American Civil Liberties Union of Washington
06/14/13	86585-0 WSSC	Petitioner's Response to Amicus Curiae Briefs of the NAACP Legal Defense & Educational Fund, Inc. and the American Civil Liberties Union
06/14/13	86585-0 WSSC	State's Answer to Brief of Amici Curiae American Civil Liberties Union & American Civil Liberties Union of Washington

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
06/17/13	86585-0 WSSC	State's Answer to Brief of Amicus Curiae NAACP Legal Defense & Educational Fund, Inc.
06/17/13	86585-0 WSSC	State's Motion to Strike Appendix to Gentry's Brief in Response to Briefs of Amici
06/19/13	86585-0 WSSC	Petitioner's Motion to Strike Statistical Arguments in State's Response to Amici
06/20/13	86585-0 WSSC	Petitioner's Response to the State's Motion to Strike Filed June 17, 2013
06/21/13	86585-0 WSSC	State's Reply Re: Motion to Strike Appendix to Gentry's Brief in Response to Briefs of Amici; State's Response to Gentry's Motion to Strike Statistical Arguments
06/24/13	86585-0 WSSC	Petitioner's Reply on Alternative Motion to Strike Statistical Information Filed June 19, 2013
06/25/13	86585-0 WSSC	Oral Argument held
07/15/13	12-10321 USSC	Brief in Opposition
07/16/13	86585-0 WSSC	State's Motion to Strike Appendix to Gentry's Brief in Response to Briefs of Amici
07/16/13	88-1-00395-3	State's Motion to Deny Further Post-Conviction DNA Testing
07/17/13	86585-0 WSSC	State's Motion to Supplement the Record
07/22/13	86585-0 WSSC	Petitioner's Response to State's "Motion to Strike" Filed July 16, 2013
07/24/13	86585-0 WSSC	State's Reply to Gentry's Purported Response to Motion to Strike
07/31/13	12-10321 USSC	Reply to Brief in Opposition
08/01/13	86585-0 WSSC	Petitioner's Response to State's Motion to Supplement Filed July 17, 2013
08/12/13	86585-0 WSSC	State's Reply Re Motion to Supplement the Record
08/29/13	12-10321 USSC	Petitioner's Supplemental Brief
09/17/13	88-1-00395-3	Response in Opposition to State's Motion to Deny Further DNA Testing
09/20/13	88-1-00395-3	Ruling on Motion to Deny Further Post Conviction DNA Testing
10/04/13	88-1-00395-3	Defendant's Motion for Recusal of Judge; Supplement to Defendant's Opposition to Motion to Deny Further DNA Testing
10/07/13	12-10321 USSC	Petition for writ of certiorari denied. <i>Gentry v. Sinclair</i> , 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
10/09/13	88-1-00395-3	Response to Gentry's Supplement Regarding the State's Motion to Deny Further Post Conviction DNA Testing
10/09/13	86585-0 WSSC	State's Statement of Additional Authorities

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
10/16/13	86585-0 WSSC	Motion for Leave to File Pleadings from Gentry v. Sinclair, US Supreme Court No. 12-10321
10/21/13	C99-0289 WDC	Response in Opposition to Motion to Vacate Stay of Execution
10/24/13	C99-0289 WDC	Respondent's Reply Memorandum on Motion to Vacate Stay of Execution
10/25/13	C99-0289 WDC	Petitioner's Statement of Additional Authority
10/28/13	88-1-00395-3	Order Denying Motion to Reconsider Defendant's Motion for Recusal; Order Denying Further Post-Conviction DNA Testing
10/31/13	12-10321 USSC	Petition for Rehearing
11/21/13	88-1-00395-3 89620-8 WSSC	Notice of Discretionary Review
11/21/13	88-1-00395-3	Motion for Indigency
12/02/13	C99-0289 WDC	Respondent's Statement of Supplemental Authority
12/02/13	12-10321 USSC	Petition for rehearing denied. <i>Gentry v. Sinclair</i> , ___ S. Ct. ___ 2013 WL 6223273 (2013).
12/02/13	86585-0 WSSC	Motion for a Stay of Execution of Death Sentence
12/06/13	86585-0 WSSC	State's Response to Motion for Stay of Execution
12/06/13	88-1-00395-3	Order to Proceed In Forma Pauperis
12/09/13	86585-0 WSSC	Petitioner/Appellant's Reply Re: Unopposed Motion for Stay of Execution

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
<u>NAME:</u>		GREGORY, Allen Eugene D.O.B.: June 9, 1972 Race: Black
<u>DATE OF CRIME:</u>		July 27, 1996
<u>PLACE OF CRIME:</u>		Pierce County
<u>BRIEF FACTS:</u>		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. <i>State v. Gregory</i> , Pierce County Cause No. 98-1-04967-9.
<u>DATE OF CONVICTION:</u>		May 15, 2012
<u>SPECIAL SENTENCING:</u>		June 13, 2012
<u>JUDGMENT AND SENTENCE:</u>		Pierce County Superior Court Cause No. 98-1-04967-9
<u>TRIAL JUDGE:</u>		Honorable Rosanne Buckner
<u>DEFENSE ATTYS:</u>		Zenon Olbertz Brett A. Purtzer Attorneys At Law 1008 Yakima Avenue, Ste 302 Tacoma, WA 98405-4850 (253) 272-9967
<u>PROSECUTING ATTYS:</u>		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
<u>APPELLANT'S ATTYS:</u>		(Direct Appeal, WSSC No. 88086-7) NEIL M. FOX LAW OFFICE OF FOX, PLLC 2003 WESTERN AVE STE 330 SEATTLE, WA 98121-2140 (206) 728-5440
		LILA J. SILVERSTEIN WASHINGTON APPELLATE PROJECT 1511 3RD AVE STE 701 SEATTLE, WA 98101-3647 (206) 587-2711
<u>RESPONDENT'S ATTYS:</u>		(Direct Appeal, WSSC No. 88086-7) MARK LINDQUIST, PROSECUTING ATTORNEY KATHLEEN PROCTOR, DEPUTY PROSECUTOR 930 TACOMA AVE S, RM 946 TACOMA, WA 98402-2171 (253) 798-7400

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
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. <i>State v. Gregory</i> , 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 to the Washington State Supreme Court
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 appointed as lead counsel and Lila Silverstein is appointed as co-counsel for Gregory.)
02/04/13	88086-7 WSSC	Objections to List of Hearings to be Transcribed and Proposed Amendments; Motion to Transfer Record
02/11/13	88086-7 WSSC	State's Opposition to Motion to Transfer Record from the Prior Appeal to this Case
02/22/13	88086-7 WSSC	Reply to State's Opposition to Motion to Transfer Record
03/04/13	88086-7 WSSC	Supplemental Documents Related to Motion to Transfer Record
03/13/13	88086-7 WSSC	Order (Motion to transfer record denied)
08/12/13	88086-7 WSSC	Motion to Release Sealed Transcripts to Counsel for Appellant
08/21/13	88086-7 WSSC	Order (setting briefing schedule; Opening brief due December 19, 2013, Answering brief due 120 days after receipt of opening brief)
08/26/13	88086-7 WSSC	State's Response to "Motion to Release Sealed Transcripts to Counsel for Appellant"
09/04/13	88086-7 WSSC	Reply to Response to Motion to Release Sealed Transcripts to Counsel for Appellant
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.)
11/26/13	88086-7 WSSC	Motion to Complete the Process of Compiling a Full Set of Aggravated Murder Reports
12/03/13	88086-7 WSSC	Motion for Extension of Time to File Appellant's Brief
12/05/13	88086-7 WSSC	Motion to Join Motion to Complete the Process of Compiling a Full Set of Aggravated Murder Reports Filed in <i>State v. Gregory</i>
12/09/13	88086-7 WSSC	Order (Motion to Join Motion to Complete the Process of Compiling a Full Set of Aggravated Murder Reports Filed in <i>State v. Gregory</i> is granted)
12/09/13	88086-7 WSSC	Order (Motion for extension of time to file Appellant's brief is granted; Opening brief due February 19, 2014)

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
<u>NAME:</u>		SCHERF, Byron Eugene D.O.B.: August 3, 1958 Race: Caucasian
<u>DATE OF CRIME:</u>		January 29, 2011
<u>PLACE OF CRIME:</u>		Snohomish County
<u>BRIEF FACTS:</u>		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. <i>State v. Scherf</i> , Snohomish County Superior Court Cause No. 11-1-00404-4.
<u>DATE OF CONVICTION:</u>		May 9, 2013
<u>SPECIAL SENTENCING:</u>		May 15, 2013
<u>JUDGMENT AND SENTENCE:</u>		Snohomish County Superior Court Cause No. 11-1-00404-4 May 15, 2013
<u>TRIAL JUDGE:</u>		Honorable George Appel
<u>DEFENSE ATTYS:</u>		Karen Ann Halverson Jon Thomas Scott Everett, WA James Elliot Lobsenz Seattle, WA
<u>PROSECUTING ATTYS:</u>		Mark Roe, Prosecuting Attorney Edward E. Stemler, Deputy Prosecutor Paul Stern, Deputy Prosecutor 3000 Rockefeller Everett, WA 98201 (425) 388-3333
<u>APPELLANT'S ATTYS:</u>		(Direct Appeal, WSSC No. 88906-6) RITA GRIFFITH ATTORNEY AT LAW 4616 25TH AVE NE SEATTLE, WA 98105-4523 (206) 547-1742
		MARK LARRANAGA WALSH & LARRANAGA 705 2ND AVE STE 501 SEATTLE, WA 98104-1715 (206) 325-7900
<u>RESPONDENT'S ATTYS:</u>		(Direct Appeal, WSSC No. 88906-6) MARK ROE, PROSECUTING ATTORNEY SETH FINE, DEPUTY PROSECUTING ATTORNEY KING COUNTY COURTHOUSE 3000 ROCKEFELLER AVE EVERETT, WA 98201-4060 (425) 388-3333

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
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 is appointed as lead counsel and Mark Larranaga is appointed as co-counsel to represent Byron Eugene Scherf in this appeal, to be paid for by the Office of Public Defense in accordance with the established presumptive contract fee amount.)
06/25/13	88906-6 WSSC	Notation Letter (setting Clerk's Conference set for July 31, 2013 and listing agenda of items to be discussed)
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); 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)
10/16/13	88906-6 WSSC	Notation Letter (Appellant's opening brief due February 17, 2014, Respondent's brief due 120 days after receipt, reply brief due 60 days after receipt of Respondent's brief)

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
<u>NAME:</u>		SCHIERMAN, Conner Michael D.O.B.: September 14, 1981 Race: Caucasian
<u>DATE OF CRIME:</u>		July 16, 2006, or early morning July 17, 2006
<u>PLACE OF CRIME:</u>		King County
<u>BRIEF FACTS:</u>		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. <i>State v. Schierman</i> , King County Superior Court Cause No. 06-1-06563-4.
<u>DATE OF CONVICTION:</u>		April 12, 2010
<u>SPECIAL SENTENCING:</u>		May 5, 2010
<u>JUDGMENT AND SENTENCE:</u>		King County Superior Court Cause No. 06-1-06563-4 May 27, 2010
<u>TRIAL JUDGE:</u>		Honorable Greg Canova
<u>DEFENSE ATTYS:</u>		James Conroy Peter Connick Seattle, WA
<u>PROSECUTING ATTYS:</u>		Dan Satterberg, Prosecuting Attorney Scott O'Toole, Senior Deputy Prosecutor King County Courthouse 516 Third Avenue Seattle, WA 98104 (206) 296-0100
<u>APPELLANT'S ATTYS:</u>		(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
<u>RESPONDENT'S ATTYS:</u>		(Direct Appeal, WSSC No. 84614-6) DAN SATTERBERG, PROSECUTING ATTORNEY JAMES WHISMAN, SUPERVISING ATTORNEY SCOTT O'TOOLE, SENIOR DEPUTY PROSECUTOR KING COUNTY COURTHOUSE 516 THIRD AVENUE SEATTLE, WA 98104 (206) 296-0100

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
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 <i>In Forma Pauperis</i> , Appointment of Counsel and Preparation of Records
06/23/10	84614-6 WSSC	Order (Suzanne Elliott is appointed as lead counsel and David Zuckerman is appointed as co-counsel.)
12/09/10	84614-6 WSSC	Motion to Stay the DOC's Collection of Costs Specifically Waived by Trial Court Order
12/15/10	84614-6 WSSC	Order (The Court received the e-mail response of James M. Whisman regarding the Appellant's "Motion To Stay The DOC's Collection Of Costs Specifically Waived By The Trial Court Order." Further review of the motion, as well as a review of the status as to the actual parties in this matter, raises the issue as to whether or not the motion is properly filed in Supreme Court cause number 84614-6. First, it appears that the DOC is not a party to this action, nor would the challenge to its administrative interpretation and/or application of the terms of the trial court order regarding its apparent collections appear to be within the scope of the pending appeal. Accordingly, in that regard, the parties in this matter are directed to serve and file written comments (which may be in letter form) addressing whether or not the motion should be considered by this Court in this matter. Said comments should include citations to any authority in support of the position taken in the comments.)
12/27/10	84614-6 WSSC	Appellant's comments (via letter)
01/07/11	84614-6 WSSC	Respondent's comments
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)
12/13/11	06-1-06563-4	Order Denying Motion to Seal
12/13/11	06-1-06563-4	Motion for Court Appointment of Defense Expert
12/13/11	06-1-06563-4	Order for Expert Services
01/05/12	06-1-06563-4	Stipulation re Jury Policy and Jury Summons
01/25/12	06-1-06563-4	Stipulation re Jury Policy and Jury Summons
03/13/12	06-1-06563-4	Declaration of Gregory Wheeler
07/31/13	84614-6 WSSC	Order (setting briefing schedule: opening brief due 10/14/13, answering brief due 2/14/14, reply brief due 3/31/14)

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
10/09/13	84614-6 WSSC	Motion to Continue Time to File Opening Brief
10/15/13	84614-6 WSSC	Order (Motion to Continue granted; opening brief due no later than November 15, 2013)
11/18/13	84614-6 WSSC	Appellant's Opening Brief
11/21/13	84614-6 WSSC	Notice of Appearance (Donna Wise)
11/25/13	84614-6 WSSC	Notice of Appearance and Substitution of Counsel

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
<u>NAME:</u>		WOODS, Dwayne D.O.B.: 07-04-69 Race: Black
<u>DATE OF CRIME:</u>		April 27, 1996
<u>PLACE OF CRIME:</u>		Spokane County
<u>BRIEF FACTS:</u>		Dwayne Woods was convicted of two counts of aggravated first degree murder for the murders of Telisha Shaver (Count 1) and Jade Moore (Count 2). As to Count 1, the aggravating circumstances were: (1) the murder was committed to conceal the commission of a crime or to protect or conceal the identity of any person committing a crime; and (2) there was more than one victim and the murders were part of a common scheme or plan of the defendant. As to Count 2, the aggravating circumstances were: (1) [same as #1 above]; and (2) the murder was committed in the course of or in furtherance of the crime of first degree rape; and (3) [same as #2 for Count 1]. <i>State v. Woods</i> , Spokane County Superior Court Cause No. 96-1-01143-7.
<u>DATE OF CONVICTION:</u>		June 20, 1997
<u>SPECIAL SENTENCING:</u>		June 25, 1997
<u>JUDGMENT AND: SENTENCE</u>		Spokane County Superior Court Cause No. 96-1-01143-7 July 23, 1997
<u>TRIAL JUDGE:</u>		Honorable Michael E. Donohue
<u>DEFENSE ATTYS:</u>		Richard Fasey James Sheehan James Ames Spokane, WA
<u>PROSECUTING ATTYS:</u>		Steven Tucker, Prosecuting Attorney James R. Sweetser, prior counsel and former Prosecuting Attorney John F. Driscoll, Senior Deputy Prosecutor Spokane County Prosecutor's Office Public Safety Building West 1100 Mallon Avenue Spokane, WA 99260 (509) 477-3662
<u>APPELLANT'S ATTYS:</u>	Lenell Rae Nussbaum Seattle, WA	Joan M. Fisher Oliver W. Loewy Federal Public Defender - Id Moscow, ID
<u>PETITIONER'S ATTYS:</u>	(Personal Restraint Petition #71780-0) Lenell Rae Nussbaum Seattle, WA	Judith M. Mandel Tacoma, WA

DATE CAUSE ACTION

(Federal Habeas Corpus, USDC EDC #CV-05-0319-LRS, 9th Cir # 09-99003)
SUZANNE LEE ELLIOTT **DAVID ZUCKERMAN**
ATTORNEY AT LAW **ATTORNEY AT LAW**
1300 HOGE BUILDING **1300 HOGE BUILDING**
705 SECOND AVENUE **705 SECOND AVENUE**
SEATTLE, WA 98104 **SEATTLE, WA 98104**
(206) 623-0291 **(206) 623-1595**

RESPONDENT'S ATTYS:

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

(Federal Habeas Corpus, USDC EDC #CV-05-0319-LRS, 9th Cir # 09-99003)
ROBERT W. FERGUSON, ATTORNEY GENERAL
JOHN J. SAMSON, SENIOR COUNSEL
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DATE CAUSE ACTION

08/04/97	65585-5 WSSC	Notice of Appeal
03/22/00	65585-5 WSSC	Oral argument held
05/24/01	65585-5 WSSC	Opinion affirming conviction and death sentence. Chief Justice Alexander authored the opinion for the Court. Justice Sanders dissented. <i>State v. Woods</i> , 143 Wn.2d 561, 23 P.3d 1046 (2001)
06/01/01	65585-5 WSSC	Cost Bill (\$50,975.71 to AIDF & \$535.01 to Spokane County Prosecutor)
08/20/01	01-5921 USSC	Petition for Writ of Certiorari
10/09/01	01-5921 USSC	Petition for Writ of Certiorari denied. <i>Woods v. Washington</i> , 534 U.S. 964, 122 S.Ct. 374, 151 L. Ed. 2d 285 (2001)
10/15/01	65585-5 WSSC	Mandate issued
11/27/01	96-1-01143-7	Death Warrant (setting execution for December 12, 2001)
11/27/01	71780-0 WSSC	Application for Stay of Execution Pursuant to RAP 16.24
11/27/01	71780-0 WSSC	Notation Order (the application for stay of execution is granted)
07/02/02	71780-0 WSSC	Order (the matter is referred to the Spokane County Superior Court to hold a hearing and enter findings in answer to the following questions: (1) Is it Woods' desire to pursue a post-conviction relief by means of a personal restraint petition? (2) If the answer is yes, is it Woods' desire to proceed <i>pro se</i> in preparing and filing such a petition? (3) If Woods' answer to question two is no, or is a conditional or qualified yes, are his present counsel willing to abide by Woods' instructions regarding issues to be raised in such a petition?)
07/15/02	71780-0 WSSC	Reference Hearing Report (with attached transcript of hearing)

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
08/12/02	71780-0 WSSC	Additional Reference Hearing Report
06/16/05	71780-0 WSSC	Opinion denying personal restraint petition. Chief Justice Alexander authored the opinion for the Court. Justice Sanders dissented. <i>In re Woods</i> , 154 Wn.2d 400, 114 P.3d 607 (2005)
09/30/05	71780-0 WSSC	Order (denying motion for reconsideration)
10/03/05	71780-0 WSSC	Certificate of Finality
10/14/05	C05-319 EDC	Emergency Order Staying Execution of Dwayne Anthony Woods
07/21/06	C05-319 EDC	Petition for Writ of Habeas Corpus
08/21/08	C05-319 EDC	Order Denying Motion to Expand Record with Documents Re: Johnny Knight
02/05/09	C05-319 EDC	Order Denying Petition, Supplement, and Revised Petition for a Writ of Habeas Corpus; Judgment in a Civil Case
02/10/09	C05-319 EDC	Notice of Appeal
02/12/09	C05-319 EDC	Order (granting stay of execution pending Court's decision regarding certificate of appealability issue; if certificate of appealability is granted, the stay of execution will remain in effect during the pendency of the appeal and until the Court of Appeals issues its mandate)
04/10/09	C05-319 EDC	Order Granting Motion for Certificate of Appealability in Part and Denying in Part
03/04/10	09-99003 9 CIR	Oral argument held
08/10/11	09-99003 9CIR	Opinion affirming the judgment of the district court. Judge Paez authored the opinion, with Judges Tallman and Smith concurring. <i>Woods v. Sinclair</i> , 655 F.3d 886 (9 th Cir. 2011).
09/07/11	09-99003 9 CIR	Petition for Rehearing En Banc
09/29/11	09-99003 9 CIR	Order (denying petition for rehearing)
10/05/11	09-99003 9 CIR	Order (granting motion to stay the mandate)
12/19/11	11-7978 USSC	Petition for Writ of Certiorari; Motion to Proceed <i>In Forma Pauperis</i> ; Petitioner's Motion to Defer Consideration of his Petition for Writ of Certiorari Pending a Decision in <i>Martinez v. Ryan</i> , 10-1001
12/23/11	11-7978 USSC	Response to Petitioner's Motion to Defer Consideration of Petition for a Writ of Certiorari
12/28/11	09-99003 9 CIR	Order (granting motion to continue stay of mandate)
01/04/12	96-1-01143-7	Notice of Appearance (Suzanne Elliott & David Zuckerman); Motion for Appointment of Counsel; Motion for DNA Testing
01/20/12	11-7978 USSC	Respondent's Brief in Opposition
01/23/12	96-1-01143-7	Memorandum in Opposition (Vols 1 – 3)
01/31/12	11-7978 USSC	Petitioner's Reply Brief

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
02/03/12	96-1-01143-7	Reply Re: DNA Testing
02/13/12	96-1-01143-7	Sur-Reply Memorandum in Opposition
02/15/12	96-1-01143-7	Supplemental and Clarifying Argument Re: DNA Testing
03/26/12	11-7978 USSC	Order (granting petition for writ of certiorari, vacating the judgment, and remanding to the Ninth Circuit for further consideration in light of <i>Martinez v. Ryan</i> .) <i>Woods v. Holbrook</i> , 132 S. Ct. 1819 (2012).
05/17/12	09-99003 9 CIR	Order (parties are ordered to file supplemental briefs addressing the effect of the Supreme Court's ruling in <i>Martinez v. Ryan</i> .)
06/28/12	09-99003 9 CIR	Respondent's Supplemental Brief Re: <i>Martinez v. Ryan</i>
06/29/12	09-99003 9 CIR	Supplemental Brief of Petitioner-Appellant Regarding <i>Martinez v. Ryan</i> and <i>Sexton v. Cozner</i>
07/13/12	96-1-01143-7	Court's Memorandum Decision (granting Defendant's motion for DNA testing)
09/05/13	09-99003 9 CIR	Second Motion for Supplemental Briefing
09/06/13	09-99003 9 CIR	Order (Appellant's second motion to file supplemental briefs is granted; parties are to simultaneously file supplemental briefs not exceeding 20 pages within 21 days of this order)
09/27/13	09-99003 9 CIR	Respondent-Appellee's Supplemental Brief Regarding <i>Detrich v. Ryan</i>
09/27/13	09-99003 9 CIR	Supplemental Brief of Petitioner-Appellant Regarding <i>Detrich v. Ryan</i>
10/02/13	09-99003 9 CIR	Motion to Strike Woods' New Exhibit
10/11/13	09-99003 9 CIR	Petitioner-Appellant's Response to State's Motion to Strike Declaration of Nussbaum

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
<u>NAME:</u>	YATES, Robert Lee, Jr. D.O.B.: May 27, 1952 Race: White	
<u>DATE OF CRIME:</u>	1997 and 1998	
<u>PLACE OF CRIME:</u>	Pierce County	
<u>BRIEF FACTS:</u>	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. <i>State v. Yates</i> , Pierce County Cause No. 00-1-03253-8.	
<u>DATE OF CONVICTION:</u>	September 19, 2002	
<u>SPECIAL SENTENCING:</u>	October 3, 2002	
<u>JUDGMENT AND: SENTENCE</u>	Pierce County Superior Court Cause No. 00-1-03253-8 October 9, 2002	
<u>TRIAL JUDGE:</u>	Honorable John McCarthy	
<u>DEFENSE ATTYS:</u>	Roger Hunko Port Orchard, WA	Mary Kay High Tacoma, WA
<u>PROSECUTING ATTYS:</u>	Gerald Horne, Prosecuting Attorney Jerry Costello, Deputy Prosecutor Barbara Corey-Boulet, Deputy Prosecutor 930 Tacoma Avenue South Tacoma, WA 98402 (253) 798-7400	
<u>APPELLANT'S ATTYS:</u>	(Direct Appeal, WSSC No. 73155-1) Gregory Link Thomas Kummerow Nancy Collins WA Appellate Project Roger Hunko (withdrew 11/04/02) Port Orchard, WA	
<u>PETITIONER'S ATTYS:</u>	(Personal Restraint Petition, WSSC No. 82101-1) Ronald Ness Port Orchard, WA 98366-4604 Jeffrey E. Ellis Portland, Or 97205-3813	Judith Mandel Xi'an Shaanxi Province ZZ 710063 Steve Witchley Seattle, WA 98104

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
		(Federal Habeas Corpus, USDC WDC #C13-0842-RSM) JEFFREY E. ELLIS OR CAPITAL RESOURCE CTR 621 SW MORRISON ST, SUITE 1025 PORTLAND, OR 97205-3813 (206) 218-7076
		TODD MAYBROWN ALLEN, HANSEN & MAYBROWN, P.S. 600 UNIVERSITY STREET, SUITE 3020 SEATTLE, WA 98101 (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
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OLYMPIA, WA 98504-0116
(360) 586-1445

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
10/17/02	73155-1 WSSC	Notice of Appeal
11/30/06	73155-1 WSSC	Oral argument held
09/27/07	73155-1 WSSC	Opinion affirming conviction and death sentence. Justice Owens authored the opinion for the Court. Justices Johnson and Chambers authored opinions concurring. Justice Sanders dissented. <i>State v. Yates</i> , 161 Wn.2d 714, 168 P.3d 359 (2007).
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. <i>Yates v. Washington</i> , 128 S. Ct. 2964 (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)

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
09/11/08	82101-1 WSSC	Order Granting Stay of Execution and Appointing Counsel
06/15/09	82101-1 WSSC	Opening Brief in Support of Personal Restraint Petition
08/03/09	82101-1 WSSC	Amended Personal Restraint Petition and Supporting Brief
06/28/10	82101-1 WSSC	State's Response to Personal Restraint Petition
07/13/10	82101-1 WSSC	Order (Motion for Acceptance of Corrected Brief granted)
09/27/10	82101-1 WSSC	Order (the Respondent's "Motion to have copy of Petition served upon Spokane County Prosecutor's Office to address claim that Petitioner received ineffective assistance of counsel to plead guilty in Spokane cases" is denied.)
11/10/10	82101-1 WSSC	Order (That 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.)
01/25/11	82101-1 WSSC	Petitioner's Reply Brief
12/28/12	82101-1 WSSC	Order (Hon. Tom Chambers is appointed as Justice Pro Tempore)
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, with Justices Gonzalez and Wiggins joining. <i>In re Yates</i> , 177 Wn.2d 1, 296 P.3d 872 (2013).
03/15/13	82101-1 WSSC	Cost Bill
04/02/13	82101-1 WSSC	Ruling on Cost Bill
04/03/13	82101-1 WSSC	Petitioner's Motion to Reconsider
04/04/13	C13-0842 WDC	Notice of Intent to File a First Habeas Petition in a Death Penalty Case
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 Maybrow)
07/16/13	C13-0842 WDC	Petitioner's Motion for Extension of Time to File Amended Petition and to Continue Stay of Execution
07/24/13	C13-0842 WDC	Response in Opposition to Petitioner's Motion for Extension of Time to File Amended Petition
07/25/13	C13-0842 WDC	Reply in Support of Petitioner's Motion for Extension of Time to File Amended Petition and to Continue Stay of Execution

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
07/29/13	C13-0842 WDC	Order on Petitioner's Motion for Extension of Time to File Amended Petition and to Continue Stay of Execution (amended petition due 1/20/14)