CAPITAL PUNISHMENT CASE STATUS REPORT

August 10, 2015

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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.

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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

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

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

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 Seattle, WA Mukilteo, WA

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

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

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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**

 **KING COUNTY COURTHOUSE**

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

 **ROBERT W. FERGUSON, ATTORNEY GENERAL**

 **JOHN J. SAMSON, SENIOR COUNSEL**

 **CORRECTIONS DIVISION**

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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).

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. *Cross v. Washington*, 549 U.S. 1022, 127 S. Ct. 559, 166 L. Ed. 2d 415 (2006).

11/30/06 71267-1 WSSC Mandate

12/19/06 71267-1 WSSC Amended Mandate

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

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

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

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

10/24/07 79761-7 WSSC Placeholder Petition

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

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

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

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

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.*)*

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)

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)

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

11/13/14 C14-1092 WDC Minute Entry (Petitioner’s Habeas Petition due May 29, 2015; Respondent’s Answer due August 31, 2015; Petitioner’s Reply due December 11, 2015)

12/17/14 14-7683 USSC Petition for Writ of Certiorari and Motion for Leave to Proceed in Forma Pauperis

01/21/15 14-7683 USSC Brief Amici Curiae of Washington Assoc. of Criminal Defense Lawyers, et al.

01/27/15 14-7683 USSC Order Extending Time to File Response to Petition (due February 23, 2015)

02/23/15 14-7683 USSC Brief of Respondent Washington in Opposition

03/04/15 14-7683 USSC Reply of Petitioner Dayva Cross

03/19/15 79761-7 WSSC Motion (Stipulation to permit Mr. Cross’s counsel to review sealed documents)

03/19/15 71267-1 WSSC Motion (Stipulation to permit Mr. Cross’s counsel to review sealed documents)

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

04/02/15 79761-7 WSSC Order (granting stipulation to permit Mr. Cross’s counsel to review sealed documents)

05/19/15 79761-7 WSSC Joint Motion to Unseal Records for Limited Purpose of Filing in Federal Court

05/19/15 71267-1 WSSC Joint Motion to Unseal Records for Limited Purpose of Filing in Federal Court

05/21/15 79761-7 WSSC Order (granting Joint Motion to Unseal Records for Limited Purpose of Filing in Federal Court)

05/21/15 71267-1 WSSC Order (granting Joint Motion to Unseal Records for Limited Purpose of Filing in Federal Court)

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

**07/12/15 C14-1092 WDC Motion for Leave to Amend First Amended Petition for Writ of Habeas Corpus; Second Amended Petition for Writ of Habeas Corpus**

**07/13/15 C14-1092 WDC Motion for Extension of Time to File Answer re Petition**

**07/13/15 C14-1092 WDC Order Granting Unopposed Motion for Leave to Amend First Amended Petition for Writ of Habeas Corpus**

**07/14/15 C14-1092 WDC Response to Motion for Extension of Time to File Answer re Petition**

**07/15/15 C14-1092 WDC Order (granting Respondent’s Motion for Extension of Time to Answer; Answer to Second Amended Petition due October 30, 2015**

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 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

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

 Gilbert Levy Catherine Ann Chaney

 (Personal Restraint Petition, WSSC #89590-2)

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 (Personal Restraint Petition, WSSC #70834-7)

 Barbara Corey-Boulet, Deputy

 John Hillman, Deputy

 (Direct Appeal, WSSC Cause #80209-2)

 Gerald Horne, Prosecuting Attorney

 John Martin Neeb, Deputy

 Kathleen Proctor, Deputy

(Personal Restraint Petition, WSSC #89590-2)

 **MARK E. LINDQUIST, PROSECUTING ATTORNEY**

 **KATHLEEN PROCTOR, DEPUTY**

DATE CAUSE ACTION

09/28/00 66537-1-WSSC Opinion affirming conviction and death sentence. Justice Smith authored the opinion for the Court. Justice Sanders dissented. State v. Davis, 141 Wn.2d 798, 10 P.3d 977 (2000)

11/04/04 70834-7 WSSC Opinion granting personal restraint petition in part and remanding for a new sentencing proceeding. Justice Ireland authored the opinion for the Court. Justice Chambers filed a concurring opinion. Justice Sanders dissented. *In re Davis*, 152 Wn.2d 647, 101 P.3d 1 (2004).

11/29/04 70834-7 WSSC Certificate of Finality

05/15/07 97-1-00432-4 Sentencing hearing (death sentence imposed)

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

06/06/07 80209-2 WSSC Notice of Appeal

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).

10/08/12 80209-2 WSSC Motion for Reconsideration

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

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

10/11/13 80209-2 WSSC Mandate (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 for Cecil E. Davis)

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

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

09/25/14 89590-2 WSSC Order (Defendant's motion for extension of deadlines is granted. The Petitioner's personal restraint petition and supplemental briefing shall be served and filed by not later than April 13, 2015. It is further ordered this stay of the execution will automatically terminate on April 14, 2015, if the Petitioner has not filed a personal restraint petition with this Court by April 13, 2015.)

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

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

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

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

05/14/15 89590-2 WSSC Amended Personal Restraint Petition

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

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

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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**

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

 Steven Witchley (withdrew 8/29/12)

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

 David S. McEachran, Prosecuting Attorney

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

 **ROBERT W. FERGUSON, ATTORNEY GENERAL**

 **JOHN J. SAMSON, SENIOR COUNSEL**

 **RONDA D. LARSON, ASSISTANT ATTORNEY GENERAL**

 **CORRECTIONS DIVISION**

 **PO BOX 40116**

 **OLYMPIA, WA 98504-0116**

 **(360) 586-1445**

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

 Olympia, WA

DATE CAUSE ACTION

05/13/96 64085-8 WSSC Notice of Appeal

11/19/98 64085-8 WSSC Oral argument held

10/07/99 64085-8 WSSC Opinion affirming conviction and death sentence and granting State’s motion to strike Appellant’s “Social History”. Justice Talmadge authored the opinion for the Court. Justice Sanders dissented. State v. Elmore, 139 Wn.2d 250, 985 P.2d 289 (1999)

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

10/09/00 64095-8 WSSC Mandate issued

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

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

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

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

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

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

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

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

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

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

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

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

10/21/13 12-99003 9 CIR Appellant's Opening Brief (Corrected)

01/14/14 12-99003 9 CIR Brief of Respondent-Appellee

03/10/14 12-99003 9 CIR Appellant’s Reply Brief

07/22/14 12-99003 9 CIR Order (Respondent shall file a supplemental brief addressing the two uncertified issues raised in the opening brief by August 28, 2014)

08/21/14 12-99003 9 CIR Appellee’s Supplemental Brief Re Uncertified Issues

09/09/14 12-99003 9 CIR Appellant’s Reply Brief (re: uncertified issues)

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

03/25/15 C08-0053 WDC Letter from Attorneys for Petitioner Clark Elmore to the Hon. Ronald B. Leighton re Proposed Clemency Budget and request for authorization of up to 100 attorney hours

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)

04/03/15 12-99003 9 CIR Unopposed Motion for Extension of Time to File Petition for Rehearing or Petition for Rehearing with Suggestion for Rehearing En Banc

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

06/12/15 12-99003 9 CIR Appellant’s Motion to File Addendum in 0 Volumes to Motion for Rehearing or Rehearing En Banc

06/16/15 12-99003 9 CIR Appellee’s Response to Motion to File Addendum

06/24/15 12-99003 9 CIR Order (granting Appellant’s Motion for Leave to File Supplement to Motion for Rehearing or Rehearing En Banc; response due July 9, 2015)

07/01/15 12-99003 9 CIR Appellee’s Response to Petition for Panel Rehearing and Petition for Rehearing En Banc

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)

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

**RITA J. GRIFFITH TIMOTHY FORD**

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 **(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 98104

RESPONDENT'S ATTYS: (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

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**

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 **(360) 586-1445**

DATE CAUSE ACTION

08/08/91 58415-0 WSSC *State v. Gentry*; Notice of Appeal

11/09/93 58415-0 WSSC Oral argument held

01/06/95 58415-0 WSSC Opinion (affirming conviction and sentence of death). Majority opinion authored by Justice Andersen. Justices Utter, Johnson and Madsen dissented. *State v. Gentry*, 125 Wn.2d 570, 888 P.2d 1105 (1995)

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

10/05/95 58415-0 WSSC Mandate issued

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

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

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

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

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

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

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

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

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

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

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

03/6-9/06 C99-0289 WDC Evidentiary hearing held

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11/17/11 09-99021 9 CIR Oral argument held

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

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

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

06/25/13 86585-0 WSSC Oral argument held

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

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

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

10/09/13 09-99021 9 CIR Mandate

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

10/31/13 12-10321 USSC Petition for Rehearing

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

 89620-8 WSSC

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

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

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

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

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

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

02/12/14 86585-0 WSSC Petitioner-Appellant's Motion to Supplement Record; Petitioner-Appellant's Motion for Reconsideration

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

03/27/14 86585-0 WSSC State's Response to Motion for Reconsideration

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

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

05/07/14 86585-0 WSSC Order Denying Further Reconsideration and Denying Motion to Supplement the Record

05/16/14 86585-0 WSSC Motion to Continue Stay of Execution of Death Sentence Pending Ruling on Stay in Related Case

05/23/14 86585-0 WSSC State's Response to Gentry's Motions to Continue or Issue Stay of Execution

05/30/14 86585-0 WSSC Reply Regarding Motion to Continue Stay of Execution of Death Sentence Pending Ruling on Stay in Related Case

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

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

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

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

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

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

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

11/05/14 89620-8 WSSC Order (Court will retain case for hearing and decision. Justice Gordon McCloud recused; Justice Stephens sat for Justice McCloud)

02/02/15 89620-8 WSSC Order (appointing Honorable Brad Maxa and Honorable Jill Johanson)

03/10/15 89620-8 WSSC Oral argument

NAME: GREGORY, Allen Eugene

 D.O.B.: June 9, 1972

 Race: Black

DATE OF CRIME: July 27, 1996

PLACE OF CRIME: Pierce County

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

DATE OF CONVICTION: May 15, 2012

SPECIAL SENTENCING: June 13, 2012

JUDGMENT AND Pierce County Superior Court

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

TRIAL JUDGE: Honorable Rosanne Buckner

DEFENSE ATTYS: Zenon Olbertz

 Brett A. Purtzer

 Attorneys At Law

 1008 Yakima Avenue, Ste 302

 Tacoma, WA 98405-4850

 (253) 272-9967

PROSECUTING ATTYS: Mark Lindquist, Prosecuting Attorney

 John Neeb, Deputy Prosecuting Attorney

 Pierce County Prosecutor's Office

 County-City Building

 930 Tacoma Avenue South, Room 946

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 (253) 798-7400

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

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

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

 **2003 WESTERN AVE STE 330 1511 3RD AVE STE 701**

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

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

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

 **JOHN MARTIN NEEB, PROSECUTING ATTORNEY**

 **KATHLEEN PROCTOR, DEPUTY PROSECUTOR**

 **930 TACOMA AVE S, RM 946**

 **TACOMA, WA 98402-2171**

 **(253) 798-7400**

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

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

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

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

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

03/13/13 88086-7 WSSC Order (Appellant’s motion to transfer record from prior appeal denied)

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.)

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 *State v. Gregory* is granted)

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

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

04/16/14 88086-7 WSSC State's Response to Transfer Selected Transcripts from Prior Appeal

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

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

10/13/14 88086-7 WSSC Motion for Permission to File Updated Report on Race and the Death Penalty in Washington

11/17/14 88086-7 WSSC State’s Objection to Motion to Add Updated Report to Record on Review and Motion to Strike Improper Appendices to Appellant’s Brief

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

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

06/03/15 88086-7 WSSC Appellant’s Motion for Permission to File Over-length Brief

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

**07/16/15 88086-7 WSSC Order (granting Appellant’s Motion for Permission to File Over-length Brief)**

**07/16/15 88086-7 WSSC Petitioner’s Additional Authorities**

NAME: SCHERF, Byron Eugene

 D.O.B.: August 3, 1958

 Race: Caucasian

DATE OF CRIME: January 29, 2011

PLACE OF CRIME: Snohomish County

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

DATE OF CONVICTION: May 9, 2013

SPECIAL SENTENCING: May 15, 2013

JUDGMENT AND Snohomish County Superior Court

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

 May 15, 2013

TRIAL JUDGE: Honorable George Appel

DEFENSE ATTYS: Karen Ann Halverson

 Jon Thomas Scott

 Everett, WA

 James Elliot Lobsenz

 Seattle, WA

PROSECUTING ATTYS: Mark Roe, Prosecuting Attorney

 Edward E. Stemler, Deputy Prosecutor

 Paul Stern, Deputy Prosecutor

 3000 Rockefeller

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 (425) 388-3333

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

 **RITA GRIFFITH MARK LARRANAGA**

 **ATTORNEY AT LAW WALSH & LARRANAGA**

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

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

 **MARK ROE, PROSECUTING ATTORNEY**

 **SETH FINE, DEPUTY PROSECUTING ATTORNEY**

 **SNOHOMISH COUNTY COURTHOUSE**

 **3000 ROCKEFELLER AVE**

 **EVERETT, WA 98201-4060**

 **(425) 388-3333**

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

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

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

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

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

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

08/14/14 88906-6 WSSC Order (Appellant's motion to file an overlength opening brief is granted. The Appellant's overlength opening brief received by this Court on August 6, 2014, is accepted for filing.)

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

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

06/25/15 88906-6 WSSC Motion for Extension of Time to File Respondent’s Brief

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

**07/15/15 88906-6 WSSC Order (granting respondent’s motion for extension of time to file. Appellant’s reply brief due August 31, 2015)**

**07/15/15 88906-6 WSSC Order (directing respondent’s counsel Seth Aaron Fine to show cause why sanctions should not be imposed due to his failure on three separate occasions to timely file respondent’s brief, and waiting on three separate occasions to file a motion for extension of time until after the due date. Counsel is directed to appear for a show cause hearing set August 4, 2015 at 9 a.m., or file a written response to show cause not later than August 3, 2015, as to why sanctions should not be imposed.)**

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

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

**07/31/15 88906-6 WSSC Response to Order to Show Cause**

**08/05/15 88906-6 WSSC Order (striking August 4, 2014 show cause hearing and accepting counsel’s assertion that he was committed to work with his office to reprioritize his duties and ensure late filing will not occur again; no sanctions imposed.)**

NAME: SCHIERMAN, Conner Michael

 D.O.B.: September 14, 1981

 Race: Caucasian

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

PLACE OF CRIME: King County

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

DATE OF CONVICTION: April 12, 2010

SPECIAL SENTENCING: May 5, 2010

JUDGMENT AND King County Superior Court

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

 May 27, 2010

TRIAL JUDGE: Honorable Gregory Canova

DEFENSE ATTYS: James Conroy

 Peter Connick

 Seattle, WA

PROSECUTING ATTYS: Dan Satterberg, Prosecuting Attorney

 Scott O’Toole, Senior Deputy Prosecutor

 King County Courthouse

 516 Third Avenue

 Seattle, WA 98104

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

 **SUZANNE ELLIOTT**

 **DAVID ZUCKERMAN**

 **ATTORNEYS AT LAW**

 **705 2ND AVENUE, SUITE 1300**

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

 **DAN SATTERBERG, PROSECUTING ATTORNEY**

 **DONNA LYNN WISE, PROSECUTING ATTORNEY**

 **ERIN HAIROPOULOS BECKER, PROSECUTING ATTORNEY**

 **KING COUNTY COURTHOUSE**

 **516 THIRD AVENUE**

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 **(206) 296-0100**

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

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

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

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

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

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

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

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

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

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

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

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

01/26/15 84614-6 WSSC Motion by American Civil Liberties Union of Washington for leave to file brief of amicus curiae

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

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

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

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

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

NAME: WOODS, Dwayne

 D.O.B.: 07-04-69

 Race: Black

DATE OF CRIME: April 27, 1996

PLACE OF CRIME: Spokane County

BRIEF FACTS: 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]. *State v. Woods*, Spokane County Superior Court Cause No. 96-1-01143-7.

DATE OF CONVICTION: June 20, 1997

SPECIAL SENTENCING: June 25, 1997

JUDGMENT AND: Spokane County Superior Court

 SENTENCE Cause No. 96-1-01143-7

 July 23, 1997

TRIAL JUDGE: Honorable Michael E. Donohue

DEFENSE ATTYS: Richard Fasey

 James Sheehan

 James Ames

 Spokane, WA

PROSECUTING ATTYS: 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

APPELLANT’S ATTYS: Lenell Rae Nussbaum Joan M. Fisher

 Seattle, WA Oliver W. Loewy

 Federal Public Defender - Id

 Moscow, ID

PETITIONER’S ATTYS: (Personal Restraint Petition #71780-0)

 Lenell Rae Nussbaum Judith M. Mandel

 Seattle, WA Tacoma, WA

 (Federal Habeas Corpus, USDC EDC #CV-05-0319-LRS, 9th Cir # 09-99003)

 **suzanne Lee Elliott DAVID ZUCKERMAN**

 **Attorney at Law Attorney at Law**

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(Federal Habeas Corpus, USSC #14-931 (Petition for Writ Of Certiorari)

 **ROBERT W. FERGUSON, Attorney General**

 **john j. samson, SENIOR COUNSEL**

 **CORRECTIONS Division**

 **P.O. Box 40116**

 **Olympia, WA 98504-0116**

 **(360) 586-1445**

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**

 **CORRECTIONS Division**

 **P.O. Box 40116**

 **Olympia, WA 98504-0116**

 **(360) 586-1445**

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. *State v. Woods*, 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. *Woods v. Washington*, 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 *pro se* 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)

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. *In re Woods*, 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 9 CIR Opinion affirming the judgment of the district court. Judge Paez authored the opinion, with Judges Tallman and Smith concurring. *Woods v. Sinclair*, 655 F.3d 886 (9th Cir. 2011).

09/29/11 09-99003 9 CIR Order (denying petition for rehearing)

12/19/11 11-7978 USSC Petition for Writ of Certiorari

01/04/12 96-1-01143-7 Notice of Appearance (Suzanne Elliott & David Zuckerman); Motion for Appointment of Counsel; Motion for 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 *Martinez v. Ryan*.) *Woods v. Holbrook*, 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 *Martinez v. Ryan*.)

06/28/12 09-99003 9 CIR Respondent's Supplemental Brief Re: *Martinez v. Ryan*

06/29/12 09-99003 9 CIR Supplemental Brief of Petitioner-Appellant Regarding *Martinez v. Ryan* and *Sexton v. Cozner*

07/13/12 96-1-01143-7 Court’s Memorandum Decision (granting Defendant’s motion for DNA testing)

09/06/13 09-99003 9 CIR Order (parties are directed to simultaneously file supplemental briefs addressing the effect, if any, of *Detrich v. Ryan*, No. 08-99001)

09/27/13 09-99003 9 CIR Respondent-Appellee's Supplemental Brief Regarding *Detrich v. Ryan;* Supplemental Brief of Petitioner-Appellant Regarding *Detrich v. Ryan*

10/02/13 09-99003 9 CIR Motion to Strike Woods' New Exhibit (new declaration by Woods’ post-conviction counsel)

10/11/13 09-99003 9 CIR Petitioner-Appellant's Response to State's Motion to Strike Declaration of Nussbaum

08/25/14 09-99003 9 CIR Order (Respondent’s motion to strike Petitioner’s new exhibit is granted)

08/25/14 09-99003 9 CIR Opinion affirming in part and vacating in part the district court’s judgment and remanding for the district court to consider in the first instance whether Woods can show cause and prejudice under *Martinez v. Ryan*. Judge Paez authored the opinion, with Judge Smith concurring. Judge Tallman concurred in part and dissented in part. *Woods v. Sinclair,* 764 F.3d 1109 (9th Cir. 2014).

09/08/14 09-99003 9 CIR Petition for Rehearing En Banc

10/30/14 09-99003 9 CIR Order (denying petition for rehearing en banc)

01/28/15 14-931 USSC State’s Petition for a Writ of Certiorari; Appendix

03/05/15 14-931 USSC Brief Amici Curiae of Arizona, et al.

04/03/15 14-931 USSC Brief of Respondent Dwayne Anthony Woods

04/03/15 14-931 USSC Respondent’s Motion for Leave to Proceed in Forma Pauperis

04/20/15 14-931 USSC Petitioner Donald Holbrook’s Reply

05/18/15 14-931 USSC Petition for writ of certiorari denied; Respondent’s motion for leave to proceed in forma pauperis granted. *Holbrook v. Woods,* 135 S. Ct. 2311 (2015)

05/20/15 09-99003 9 CIR Mandate

**07/15/15 C05-319 EDC Petitioner’s Supplemental Brief**

**07/15/15 C05-319 EDC Stipulation to File Excerpts of Record as Alternative State Court Record**

NAME: YATES, Robert Lee, Jr.

 D.O.B.: May 27, 1952

 Race: White

DATE OF CRIME: 1997 and 1998

PLACE OF CRIME: Pierce County

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

DATE OF CONVICTION: September 19, 2002

SPECIAL SENTENCING: October 3, 2002

JUDGMENT AND: Pierce County Superior Court

 SENTENCE Cause No. 00-1-03253-8

 October 9, 2002

TRIAL JUDGE: Honorable John McCarthy

DEFENSE ATTYS: Roger Hunko Mary Kay High

 Port Orchard, WA Tacoma, WA

PROSECUTING ATTYS: Gerald Horne, Prosecuting Attorney

 Jerry Costello, Deputy Prosecutor

 Barbara Corey-Boulet, Deputy Prosecutor

 930 Tacoma Avenue South

 Tacoma, WA 98402

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

 Gregory Link

 Thomas Kummerow

 Nancy Collins

 WA Appellate Project

 Roger Hunko (withdrew 11/04/02)

 Port Orchard, WA

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

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 Jeffrey E. Ellis Steve Witchley

 Portland, Or 97205-3813 Seattle, WA 98104

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

 **JEFFREY E. ELLIS TODD MAYBROWN**

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

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

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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**

 **CORRECTIONS Division**

 **P.O. Box 40116**

 **Olympia, WA 98504-0116**

 **(360) 586-1445**

DATE CAUSE ACTION

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

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

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

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

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

08/01/08 73155-1 WSSC Mandate

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

01/29/14 C13-0842 WDC Response to Petitioner's Motion for Stay and Abeyance

01/30/14 C13-0842 WDC Reply in Support of Petitioner's Motion for Stay and Abeyance

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

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

02/28/14 89792-1 WSSC Order (On January 16, 2014, the Petitioner's Personal Restraint Petition and Motion and Declaration for Order Authorizing the Defendant to Seek Review at Public Expense were both received. The portion of the motion that seeks a waiver of the filing fee is granted, and the personal restraint petition has been filed. The balance of the relief requested in the motion is denied.)

08/26/14 89792-1 WSSC Respondent’s Brief (re: PRP)

08/29/14 89792-1 WSSC Supplemental Pleadings (appendices to State’s response to PRP)

09/05/14 89792-1 WSSC Order (State’s motion to consider the report of proceedings from prior direct appeal is granted.)

09/22/14 89792-1 WSSC Petitioner’s Motion for Appointment of Counsel

10/22/14 89792-1 WSSC Order (denying Petitioner’s motion for appointment of counsel)

12/23/14 89792-1 WSSC Petitioner’s Reply Brief in Support of Personal Restraint Petition

07/09/15 89792-1 WSSC Opinion dismissing personal restraint petition as untimely. Justice Owens authored the opinion for a unanimous court. *In re Yates*, \_\_ Wn.2d \_\_, 2015 WL 4136530 (2015)

07/09/15 C13-0842 WDC Notice of Decision by Washington Supreme Court re Petition for Writ of Habeas Corpus and Order on Motion to Stay

**07/15/15 89792-1 WSSC Cost Bill**

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

**08/10/15 C13-0842 WDC Order to Show Cause (Petitioner shall show cause no later than 7 days from the date of this Order why the stay of proceedings in this case should not be lifted)**