CAPITAL PUNISHMENT CASE STATUS REPORT

June 1, 2015

CAPITAL LITIGATION TEAM: ROBERT W. FERGUSON

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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

DATE CAUSE ACTION

NAME: CROSS, Dayva Michael

D.O.B.: September 19, 1959 Race: Caucasian

DATE OF CRIME: March 6, 1999

PLACE OF CRIME: King County

BRIEF FACTS: Dayva Michael Cross pleaded guilty to three counts of aggravated first degree murder for

the stabbing deaths of his wife, Anouchka Baldwin, and two stepdaughters, Amanda Baldwin and Salome Holly. The aggravating circumstances were that there was more than one victim and the murders were part of a common scheme or plan or the result of a single act of the person*. State v. Cross*, King County Cause 99-1-02212-9.

DATE OF GUILTY PLEA: October 23, 2000

SPECIAL SENTENCING: May 7, 2001

JUDGMENT AND King County Superior Court

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

June 22, 2001

TRIAL JUDGE: Honorable Joan DuBuque

DEFENSE ATTYS: Mark Larranaga

Richard Warner Seattle, WA

PROSECUTING ATTYS: Norm Maleng, Prosecuting Attorney

Don Raz, Senior Deputy Prosecutor Tim Bradshaw, Deputy Prosecutor King County Courthouse

516 Third Avenue, Suite W554 Seattle, WA 98104-2362

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

Todd Maybrown Kathryn Ross

Seattle, WA Mukilteo, WA

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

Todd Maybrown **JAMES LOBSENZ**

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**(206) 622-8020**

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

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3 Cross

June 1, 2015

DATE CAUSE ACTION

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**

**516 THIRD AVENUE W554**

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

**ROBERT W. FERGUSON, ATTORNEY GENERAL**

**JOHN J. SAMSON, SENIOR COUNSEL**

**CORRECTIONS DIVISION PO BOX 40116**

**OLYMPIA, WA 98504-0116**

|  |  |  |
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| 06/29/01  06/22/04  03/30/06 | 71267-1 WSSC  71267-1 WSSC  71267-1 WSSC | **(360) 586-1445**  Notice of Judgment and Sentence Oral argument held  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 |

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June 1, 2015

DATE CAUSE ACTION

June 1, 2015

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

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| DATE | CAUSE | ACTION |
| 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) |
| **05/19/2015** | **79761-7 WSSC** | **Joint Motion to Unseal Records for Limited Purpose of Filing in Federal Court** |
| **05/19/2015** | **71267-1 WSSC** | **Joint Motion to Unseal Records for Limited Purpose of Filing in Federal Court** |
| **05/21/2015** | **79761-7 WSSC** | **Order (granting Joint Motion to Unseal Records for Limited Purpose of Filing in** |
|  |  | **Federal Court)** |
| **05/21/2015** | **71267-1 WSSC** | **Order (granting Joint Motion to Unseal Records for Limited Purpose of Filing in** |
|  |  | **Federal Court)** |

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June 1, 2015

DATE CAUSE ACTION

June 1, 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

Nielsen Broman & Koch LLC Nielsen Broman & Koch LLC

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7 Davis

DATE CAUSE ACTION

June 1, 2015

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

Gilbert Levy Catherine Ann Chaney

(Personal Restraint Petition, WSSC #89590-2)

**ROGER A. HUNKO PAULA T. OLSON**

**ATTORNEY AT LAW LAW OFFICE OF PAULA T OLSON**

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

(Personal Restraint Petition, WSSC #70834-7) Barbara Corey-Boulet, Deputy

John Hillman, Deputy

(Direct Appeal, WSSC Cause #80209-2)

Gerald Horne, Prosecuting Attorney

John Martin Neeb, Deputy Kathleen Proctor, Deputy

(Personal Restraint Petition, WSSC #89590-2)

**MARK E. LINDQUIST, PROSECUTING ATTORNEY KATHLEEN PROCTOR, DEPUTY**

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).

8 Davis

DATE CAUSE ACTION

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.)

09/26/14 89590-2 WSSC Answer (Objection to motion for extension of time to file personal restraint petition.)

09/29/14 89590-2 WSSC Letter (Respondent's objection filed on September 26, 2014, has been placed in the file

without further action because on September 25, 2014, the Court entered an order granting the motion for extension of time. This Court's order dated September 25, 2014, only addressed the modification of the schedule for filing of the personal restraint petition and extension of the previously entered stay. The order did not address, nor did it purport to address, the tolling or waiver of any statute of limitations, nor did it address any of the provisions of RCW 10.73. Therefore, the determination not to take further action on the Respondent's objection at this time is without prejudice to the Respondent raising any of the arguments contained in the objection in the Respondent response to the yet to be filed personal restraint petition, if after reviewing the personal restraint petition, the Respondent believes such is warranted.)

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**

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June 1, 2015

DATE CAUSE ACTION

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)

10 Davis

June 1, 2015

DATE CAUSE ACTION

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

D.O.B.: November 17, 1951 Race: White

DATE OF CRIME: April 17, 1995

PLACE OF CRIME: Whatcom County

BRIEF FACTS: Clark Richard Elmore pleaded guilty to one count of aggravated first degree murder of

Kristy Ohnstad, the 14-year-old daughter of Elmore's live-in girlfriend. The two aggravating circumstances were (1) the murder was in the course of and in flight from Rape in the Second Degree, and (2) the murder was committed to conceal the commission and perpetrator of the crime*. State v. Elmore*, Whatcom County Cause 95-1-00310-1.

DATE OF GUILTY PLEA: July 6, 1995

SPECIAL SENTENCING: March 12, 1996

JUDGMENT AND Whatcom County Superior Court

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

May 3, 1996

TRIAL JUDGE: Honorable David Nichols

DEFENSE ATTYS: John Komorowski

Douglas Hyldahl Bellingham, WA

PROSECUTING ATTYS: David S. McEachran, Prosecuting Attorney

Whatcom County Prosecutor's Office

Whatcom County Courthouse

311 Grand Avenue

Bellingham, WA 98225

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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 Griffith Charlotte Cassady (Withdrew 03/06/98)

Seattle, WA Mobile, 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

11 Elmore

June 1, 2015

DATE CAUSE ACTION

June 1, 2015

(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) 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

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

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June 1, 2015

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| DATE | CAUSE | ACTION |
|  |  | 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 |

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|  |  |  |
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| DATE | CAUSE | ACTION |
| 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 separation 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 |
| 04/13/15 | C08-0053 WDC | CJA 20: Jeffrey Erwin Ellis as to Clark Elmore signed by Judge Ronald B. Leighton; CJA |
|  |  | 20: Robert Gombiner appointed as to Clark Elmore signed by Judge Ronald B. Leighton |
| **05/15/15** | **12-99003 9 CIR** | **Petition for Panel Rehearing and Petition for Rehearing En Banc** |

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June 1, 2015

DATE CAUSE ACTION

June 1, 2015

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**

**GRIFFITH & COLE MACDONALD HOAGUE & BAYLESS**

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

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

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

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

Seattle, WA Austin, TX

Scott Engelhard (withdrew on 5/1/09) Seattle, WA 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

15 Gentry

DATE CAUSE ACTION

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

ROBERT W. FERGUSON, ATTORNEY GENERAL

PAUL D. WEISSER, SENIOR COUNSEL

GREGORY J. ROSEN, ASSISTANT ATTORNEY GENERAL

CORRECTIONS DIVISION

P.O. BOX 40116

OLYMPIA, WA 98504-0116

(360) 586-1445

DATE CAUSE ACTION

|  |  |
| --- | --- |
| 08/08/91 58415-0 WSSC  11/09/93 58415-0 WSSC | *State v. Gentry*; Notice of Appeal 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

07/21/99 62677-4 WSSC

07/26/99 62677-4 WSSC

10/22/99 C99-0289 WDC 01/24/00 C99-0289 WDC 01/24/00 C99-0289 WDC 03/6-9/06 C99-0289 WDC

Order (staying execution of Jonathan Lee Gentry)

Certificate of Finality

Order (awarding costs in the total amount of $178,869.57)

Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254

Respondent's Answer and Memorandum of Authorities

First Amended Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. §2254

Evidentiary hearing held

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

June 1, 2015

relief).

16 Gentry

June 1, 2015

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| DATE | CAUSE | ACTION |
| 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 |

17 Gentry

June 1, 2015

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| DATE | CAUSE | ACTION |
| 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 |

18 Gentry

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| DATE | CAUSE | ACTION |
| 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 |

19 Gentry

June 1, 2015

DATE CAUSE ACTION

NAME: GREGORY, Allen Eugene

D.O.B.: June 9, 1972 Race: Black

DATE OF CRIME: July 27, 1996

PLACE OF CRIME: Pierce County

BRIEF FACTS: Allen Eugene Gregory was convicted on retrial of one count of aggravated first degree

murder for the stabbing death of his neighbor, Geneine Harshfield. The aggravating circumstances were that the murder was committed: (1) in the course of or furtherance of Robbery in the First Degree, and (2) in the course of or furtherance of Rape in the First or Second Degree. *State v. Gregory*, Pierce County Cause No. 98-1-04967-9.

DATE OF CONVICTION: May 15, 2012

SPECIAL SENTENCING: June 13, 2012

JUDGMENT AND Pierce County Superior Court

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

TRIAL JUDGE: Honorable Rosanne Buckner

DEFENSE ATTYS: Zenon Olbertz

Brett A. Purtzer Attorneys At Law

1008 Yakima Avenue, Ste 302

Tacoma, WA 98405-4850

(253) 272-9967

PROSECUTING ATTYS: Mark Lindquist, Prosecuting Attorney

John Neeb, Deputy Prosecuting Attorney Pierce County Prosecutor's Office County-City Building

930 Tacoma Avenue South, Room 946 Tacoma, WA 98402-2102

(253) 798-7400

APPELLANT'S ATTYS: (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**

20 Gregory

June 1, 2015

DATE CAUSE ACTION

June 1, 2015

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

**05/29/15 88086-7 WSSC Motion for Extension of Time to File Appellant’s Reply Brief**

**06/03/15 88086-7 WSSC Order (Appellant’s motion for extension of time to file Appellant’s reply brief is**

**granted; reply brief due June 30, 2015)**

21 Gregory

DATE CAUSE ACTION

June 1, 2015

NAME: SCHERF, Byron Eugene

D.O.B.: August 3, 1958 Race: Caucasian

DATE OF CRIME: January 29, 2011

PLACE OF CRIME: Snohomish County

BRIEF FACTS: Byron Scherf was convicted of one count of aggravated first degree murder in the death of

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

DATE OF CONVICTION: May 9, 2013

SPECIAL SENTENCING: May 15, 2013

JUDGMENT AND Snohomish County Superior Court

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

May 15, 2013

TRIAL JUDGE: Honorable George Appel

DEFENSE ATTYS: Karen Ann Halverson

Jon Thomas Scott Everett, WA

James Elliot Lobsenz Seattle, WA

PROSECUTING ATTYS: Mark Roe, Prosecuting Attorney

Edward E. Stemler, Deputy Prosecutor

Paul Stern, Deputy Prosecutor

3000 Rockefeller

Everett, WA 98201

(425) 388-3333

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

**RITA GRIFFITH MARK LARRANAGA**

**ATTORNEY AT LAW WALSH & LARRANAGA**

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

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

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

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

**MARK ROE, PROSECUTING ATTORNEY**

**SETH FINE, DEPUTY PROSECUTING ATTORNEY**

**SNOHOMISH COUNTY COURTHOUSE**

**3000 ROCKEFELLER AVE**

**EVERETT, WA 98201-4060**

**(425) 388-3333**

22 Scherf

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| DATE | CAUSE | ACTION |
| 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) |
| 11/03/14 | 88906-6 WSSC | Appellant’s Statement of Additional Authorities |
| 12/11/14 | 88906-6 WSSC | Motion for Extension of Time to File Respondent’s Brief |
| 12/12/14 | 88906-6 WSSC | Appellant’s Objection to Four-Month Extension of Time to File Respondent’s Brief |
| 12/15/14 | 88906-6 WSSC | Appellant’s Corrected Objection to Four-Month Extension of Time to File Respondent’s |
|  |  | Brief |
| 12/16/14 | 88906-6 WSSC | Order (Respondent’s motion granted. Respondent’s brief due April 1, 2015) |
| 03/31/15 | 88906-6 WSSC | Respondent’s Motion for Extension of Time to File Brief |
| 04/01/15 | 88906-6 WSSC | Appellant’s Objection to a Further Extension of Time to File Respondent’s Brief |
| 04/02/15 | 88906-6 WSSC | Order (granting Respondent’s motion for extension of time to file Respondent’s brief to |
|  |  | May 1, 2015) |
| 05/01/15 | 88906-6 WSSC | Motion for Extension of Time to File Respondent’s Brief |
| 05/05/15 | 88906-6 WSSC | Order (granting Respondent’s motion for extension of time to file brief; brief due June 1, 2015) |
| **06/01/15** | **88906-6 WSSC** | **Brief of Respondent** |

23 Scherf

June 1, 2015

DATE CAUSE ACTION

NAME: SCHIERMAN, Conner Michael

D.O.B.: September 14, 1981 Race: Caucasian

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

PLACE OF CRIME: King County

BRIEF FACTS: Conner Schierman was convicted of four counts of aggravated first degree murder in the

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

DATE OF CONVICTION: April 12, 2010

SPECIAL SENTENCING: May 5, 2010

JUDGMENT AND King County Superior Court

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

May 27, 2010

TRIAL JUDGE: Honorable Gregory Canova

DEFENSE ATTYS: James Conroy

Peter Connick Seattle, WA

PROSECUTING ATTYS: Dan Satterberg, Prosecuting Attorney

Scott O’Toole, Senior Deputy Prosecutor

King County Courthouse

516 Third Avenue

Seattle, WA 98104

(206) 296-0100

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

**SUZANNE ELLIOTT DAVID ZUCKERMAN ATTORNEYS AT LAW 705 2ND AVENUE, SUITE 1300**

**SEATTLE, WA 98104-1797**

**(206) 623-0291**

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

**DAN SATTERBERG, PROSECUTING ATTORNEY**

**DONNA LYNN WISE, PROSECUTING ATTORNEY**

**ERIN HAIROPOULOS BECKER, PROSECUTING ATTORNEY**

**KING COUNTY COURTHOUSE**

**516 THIRD AVENUE**

**SEATTLE, WA 98104**

**(206) 296-0100**

24 Schierman

June 1, 2015

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| DATE | CAUSE | ACTION |
| 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 |
| 04/28/15 | 84614-6 WSSC | **Respondent’s Statement of Additional Authorities** |
| 05/01/15 | 84614-6 WSSC | **Petitioner’s Supplemental Authorities** |
| 05/04/15 | 84614-6 WSSC | **Petitioner’s Second Supplemental Authorities** |
| 05/05/15 | 84614-6 WSSC | Oral argument held |
| **05/20/15** | **84614-6 WSSC** | **Appellant’s Third Supplemental Authority** |

25 Schierman

June 1, 2015

DATE CAUSE ACTION

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

26 Woods

June 1, 2015

DATE CAUSE ACTION

June 1, 2015

(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**

(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**

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|  |  | **(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

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DATE CAUSE ACTION

June 1, 2015

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| 07/15/02 71780-0 WSSC  08/12/02 71780-0 WSSC | 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?)  Reference Hearing Report (with attached transcript of hearing) 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*

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| DATE | CAUSE | ACTION |
| 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** | **Motion for leave to proceed in forma pauperis granted; *Holbrook v. Woods,* 135** |
|  |  | **S. Ct. \_\_\_ (2015)** |
| **05/18/15** | **14-931 USSC** | **Petition for writ of certiorari denied** |
| **05/20/15** | **09-99003 9 CIR** | **Mandate** |

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June 1, 2015

DATE CAUSE ACTION

NAME: YATES, Robert Lee, Jr.

D.O.B.: May 27, 1952 Race: White

DATE OF CRIME: 1997 and 1998

PLACE OF CRIME: Pierce County

BRIEF FACTS: Robert Lee Yates, Jr. was convicted of two counts of aggravated first degree murder for the

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

DATE OF CONVICTION: September 19, 2002

SPECIAL SENTENCING: October 3, 2002

JUDGMENT AND: Pierce County Superior Court

SENTENCE Cause No. 00-1-03253-8

October 9, 2002

TRIAL JUDGE: Honorable John McCarthy

DEFENSE ATTYS: Roger Hunko Mary Kay High

Port Orchard, WA Tacoma, WA

PROSECUTING ATTYS: Gerald Horne, Prosecuting Attorney

Jerry Costello, Deputy Prosecutor

Barbara Corey-Boulet, Deputy Prosecutor 930 Tacoma Avenue South

Tacoma, WA 98402

(253) 798-7400

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

Gregory Link

Thomas Kummerow Nancy Collins

WA Appellate Project

Roger Hunko (withdrew 11/04/02) Port Orchard, WA

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

Ronald Ness Judith Mandel

Port Orchard, WA 98366-4604 Xi'an Shaanxi Province ZZ 710063

Jeffrey E. Ellis Steve Witchley

Portland, Or 97205-3813 Seattle, WA 98104

30 Yates

June 1, 2015

DATE CAUSE ACTION

June 1, 2015

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

**JEFFREY E. ELLIS TODD MAYBROWN**

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

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

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

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

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

Gerald Horne, Prosecuting Attorney

Jerry Costello, Deputy Prosecutor

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

Kathleen Proctor, Deputy Prosecutor

Donna Yumiko Masumoto, Deputy Prosecutor

(Personal Restraint Petition, WSSC No. 82101-1) Kathleen Proctor, Deputy Prosecutor

Donna Yumiko Masumoto, Deputy Prosecutor Karen Anne Watson, Deputy Prosecutor

(Federal Habeas Corpus, USDC WDC #C13-0842-RSM) **ROBERT W. FERGUSON, ATTORNEY GENERAL PAUL D. WEISSER, SENIOR COUNSEL**

**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

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June 1, 2015

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| DATE | CAUSE | ACTION |
| 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 |
| 10/20/14 | 89792-1 WSSC | Petitioner’s Motion for Extension to File Reply Brief |

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| DATE | CAUSE | ACTION |
| 10/22/14 | 89792-1 WSSC | Order (denying Petitioner’s motion for appointment of counsel) |
| 10/22/14 | 89792-1 WSSC | Order (granting Petitioner’s motion for extension of time to file reply brief; reply brief due |
|  |  | December 26, 2014) |
| 12/23/14 | 89792-1 WSSC | Petitioner’s Reply Brief in Support of Personal Restraint Petition |

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June 1, 2015