

# CAPITAL PUNISHMENT CASE STATUS REPORT

December 5, 2012

## CAPITAL LITIGATION TEAM:

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Gregory J. Rosen, Assistant Attorney General

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## INTRODUCTION

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

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## KEY TO COURT ABBREVIATIONS

WSSC	Washington State Supreme Court
EDC	United States District Court for the Eastern District of Washington
WDC	United States District Court for the Western District of Washington
9CIR	United States Court of Appeals for the Ninth Circuit
USSC	United States Supreme Court

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
<u>NAME:</u>		CROSS, Dayva Michael D.O.B.: September 19, 1959 Race: Caucasian
<u>DATE OF CRIME:</u>		March 6, 1999
<u>PLACE OF CRIME:</u>		King County
<u>BRIEF FACTS:</u>		Dayva Michael Cross pleaded guilty to three counts of aggravated first degree murder for the stabbing deaths of his wife, Anouchka Baldwin, and two stepdaughters, Amanda Baldwin and Salome Holly. The aggravating circumstances were that there was more than one victim and the murders were part of a common scheme or plan or the result of a single act of the person. <i>State v. Cross</i> , King County Cause 99-1-02212-9.
<u>DATE OF GUILTY PLEA:</u>		October 23, 2000
<u>SPECIAL SENTENCING:</u>		May 7, 2001
<u>JUDGMENT AND SENTENCE:</u>		King County Superior Court Cause No. 99-1-02212-9 June 22, 2001
<u>TRIAL JUDGE:</u>		Honorable Joan DuBuque
<u>DEFENSE ATTYS:</u>		Mark Larranaga Richard Warner Seattle, WA
<u>PROSECUTING ATTYS:</u>		Norm Maleng, Prosecuting Attorney Don Raz, Senior Deputy Prosecutor Tim Bradshaw, Deputy Prosecutor King County Courthouse 516 Third Avenue, Suite W554 Seattle, WA 98104-2362 (206) 296-9000
<u>APPELLANT'S ATTYS:</u>		(Direct Appeal, WSSC Cause #71267-1) Todd Maybrown Allen Hansen & Maybrown P.S. 600 University Street, Suite 3020 Seattle, WA 98101-4105 (206) 447-9681  Kathryn Ross Jones, Ross, Besman & Connolly 828 Second Street, Suite D Mukilteo, WA 98275-1601 (425) 348-7937
<u>PETITIONER'S ATTYS:</u>		(Personal Restraint Petition, Washington Supreme Court #79761-7) <b>TODD MAYBROWN</b> <b>ALLEN HANSEN &amp; MAYBROWN</b> <b>600 UNIVERSITY ST., SUITE 3020</b> <b>SEATTLE, WA 98101-4105</b> <b>(206) 447-9681</b>  <b>JAMES LOBSENZ</b> <b>CARNEY BADLEY SPELLMAN</b> <b>701 5<sup>TH</sup> AVENUE, SUITE 3600</b> <b>SEATTLE, WA 98104-7010</b> <b>(206) 622-8020</b>
<u>RESPONDENT'S ATTYS:</u>		<b>DANIEL T. SATTERBERG, PROSECUTING ATTORNEY</b> Timothy Bradshaw, Deputy (withdrew 01/24/03) <b>DONALD RAZ, DEPUTY</b> <b>JAMES WHISMAN, DEPUTY</b> <b>RANDI J. AUSTELL, DEPUTY</b>

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
06/29/01	71267-1 WSSC	Notice of Judgment and Sentence
06/22/04	71267-1 WSSC	Oral argument held
03/30/06	71267-1 WSSC	Opinion (affirming conviction and sentence of death). Majority opinion authored by Justice Chambers. Chief Justice Alexander filed a concurring opinion. Justice Madsen, joined by Justices Charles Johnson, Sanders, and Owens, dissented. <i>State v. Cross</i> , 156 Wn.2d 580, 132 P.3d 80 (2006).
04/06/06	71267-1 WSSC	Cost Bill [\$128,781 to be paid to OPD, \$706.18 to King County]
11/06/06	06-6333 USSC	Petition for Writ of Certiorari denied. <i>Cross v. Washington</i> , 549 U.S. 1022, 127 S. Ct. 559, 166 L. Ed. 2d 415 (2006).
11/30/06	71267-1 WSSC	Mandate
12/19/06	71267-1 WSSC	Amended Mandate
01/30/07	99-1-02212-9	Death Warrant (setting execution for February 27, 2007)
01/31/07	79761-7 WSSC	Application for Stay of Execution
02/02/07	79761-7 WSSC	Order Granting Stay of Execution and Appointing Counsel
08/01/07	79761-7 WSSC	Petitioner's Motion for Leave to Conduct Discovery
09/05/07	79761-7 WSSC	Department of Corrections' Response to Motion for Leave to Conduct Discovery; Declaration of Richard Morgan.
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.)
09/07/07	79761-7 WSSC	Reply in Support of Petitioner's Motion for Leave to Conduct Discovery
09/18/07	99-1-02212-9	Defendant's Motion to Allow Contact with Jurors
09/26/07	79761-7 WSSC	Respondent's Objection to Ex Parte Order Granting Investigator on Jury Misconduct Issue and Request for Reconsideration
10/01/07	79761-7 WSSC	Petitioner's Response to Respondent's Motion for Reconsideration
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,

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
		Jeffrey Ellis, David Boerner, Dr. Robert Thompson, James E. Lobsenz, Jeffrey Robinson, Richard Warner.
07/10/08	79761-7 WSSC	Order (denying Respondent's Motion for Judicial Determination of Petitioner's Competency, Respondent's RAP 16.26 Motion for Discovery, and Petitioner's Motion for Oral Argument)
10/13/08	79761-7 WSSC	Response to Personal Restraint Petition
11/10/08	79761-7 WSSC	Order (Respondent's Second Motion for Discovery is granted; Petitioner's Motion for Oral Argument is denied; Respondent's Motions to Strike Declarations of Boerner, Robinson, and Torres are denied)
03/06/09	79761-7 WSSC	Order on Petitioner's Renewed Motion for Discovery re: Lethal Injection Claims
03/16/09	79761-7 WSSC	Department of Corrections' Motion for Protective Order
03/17/09	79761-7 WSSC	Order (Motion for a protective order is granted on a temporary basis only. This temporary protective order will remain in effect pending further order of the Court)
04/03/09	79761-7 WSSC	Order (Petitioner's motion for oral argument is granted only on the <i>Alford</i> plea issues. Oral argument will be heard on June 25, 2009. All other issues in this case are stayed pending resolution of the <i>Alford</i> plea issues)
05/11/09	79761-7 WSSC	Supplemental Brief of Petitioner
06/03/09	79761-7 WSSC	Brief of Amicus Curiae Washington Association of Criminal Defense Lawyers
06/08/09	79761-7 WSSC	Supplemental Brief of Respondent Re: <i>Alford</i> Plea of Guilty
06/15/09	79761-7 WSSC	Response to Brief of Amicus Curiae Washington Association of Criminal Defense Lawyers
06/19/09	79761-7 WSSC	Petitioner's Supplemental Reply Brief Re: <i>Alford</i> Plea of Guilty
06/25/09	79761-7 WSSC	Oral argument held
07/08/09	79761-7 WSSC	Order (the Court denies relief based on the <i>Alford</i> plea issues presented. The Court's reasoning will be set forth in its opinion on the merits of the Petitioner's Personal Restraint Petition to be released in due course.)
11/06/09	79761-7 WSSC	Order (Respondent's motion to lift the stay is granted in part and denied in part. The motion is denied with respect to consideration of the legality of Washington's lethal injection protocol. The motion to lift the stay is granted with respect to all other claims. The Respondent's motion for immediate dissemination of discovery is granted in part.)
12/08/09	79761-7 WSSC	Reply Brief in Support of Personal Restraint Petition
02/12/10	79761-7 WSSC	Order (Petitioner's motion for the appointment of Maria Fernanda Torres is denied but Ms. Torres may provide representation under the supervision of death penalty qualified counsel at public expense. The Respondent's motion for a deadline is granted. Petitioner has 30 days from entry of this order to comply with this Court's November 6, 2009, discovery order. The Respondent's motion for 60 days from receipt of discovery to file any additional relevant briefing on the ineffective assistance of counsel claims, and the Petitioner's motion for 60 days to respond, are granted.)

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
06/25/10	79761-7 WSSC	Order (The Respondent's motion to compel production is deferred pending further consideration of this court. Within 30 days of this order, the Petitioner shall provide this court with: (1) copies of any disputed documents, which shall be filed under seal, for this court's in camera review; and (2) a brief explaining why said documents should not be disclosed. The Respondent's request to clarify this court's November 10, 2008 order is denied without prejudice to a more specific future motion. The Respondent's motion for an extension of time is granted.)
08/26/10	79761-7 WSSC	Motion for Compliance with Court's June 25th Order, Article I, § 10, GR 15, and RAP 18.5
09/01/10	79761-7 WSSC	Petitioner's Response to Respondent's Motion for Compliance
09/27/10	79761-7 WSSC	Order (Both the Respondent's motion to compel production of the 12 documents submitted for the Court's in camera review and its motion for compliance are denied.)
11/19/10	79761-7 WSSC	Respondent's Motion for Permission to File Documents by Protective Order and for Directions as to Format for the Filing; State's Supplemental Response to PRP (filed under seal)
12/21/10	79761-7 WSSC	Petitioner's Response to Respondent's Motion Regarding Filing of Discovery
05/02/11	79761-7 WSSC	Petitioner's Reply Brief to State's Supplemental Response to PRP (filed under seal); Second Declaration of Richard Warner; Second Declaration of Mark Larranaga; Declaration of Teresa A. McMahon
11/08/11	79761-7 WSSC	Order (granting Respondent's motion for permission to file discovery documents and temporarily sealing said documents subject to further order of the Court)

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



<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
02/10/11	80209-2 WSSC	Order (Motion to Strike Improper Arguments and Appendices in Amici Briefs is passed to the merits)
02/10/11	80209-2 WSSC	Oral argument held
09/20/12	80209-2 WSSC	Opinion (affirming conviction and sentence of death). Majority opinion authored by Justice Alexander. Justice Fairhurst, joined by Justices Wiggins and Stephens dissented. Justice Gonzales did not participate. <i>State v. Davis</i> , 175 Wash.2d 287 (2012).
09/20/12	80209-2 WSSC	Cost Bill
10/05/12	80209-2 WSSC	Ruling on Cost Bill
10/08/12	80209-2 WSSC	Motion for Reconsideration
10/18/12	80209-2 WSSC	Order (Respondent requested to file an answer to motion for reconsideration by November 5, 2012)
11/05/12	80209-2 WSSC	State's Response to Motion for Reconsideration

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>								
<u>NAME:</u>	ELMORE, Clark Richard (aka James Elmore aka James Lee Dickey) D.O.B.: November 17, 1951 Race: White									
<u>DATE OF CRIME:</u>	April 17, 1995									
<u>PLACE OF CRIME:</u>	Whatcom County									
<u>BRIEF FACTS:</u>	Clark Richard Elmore pleaded guilty to one count of aggravated first degree murder of Christy Onstad, the 14-year-old daughter of Elmore's live-in girlfriend. The two aggravating circumstances were (1) the murder was in the course of and in flight from Rape in the Second Degree, and (2) the murder was committed to conceal the commission and perpetrator of the crime. <i>State v. Elmore</i> , Whatcom County Cause 95-1-00310-1.									
<u>DATE OF GUILTY PLEA:</u>	July 6, 1995									
<u>SPECIAL SENTENCING:</u>	March 12, 1996									
<u>JUDGMENT AND SENTENCE:</u>	Whatcom County Superior Court Cause No. 95-1-00310-1 May 3, 1996									
<u>TRIAL JUDGE:</u>	Honorable David Nichols									
<u>DEFENSE ATTYS:</u>	John Komorowski Douglas Hyldahl Bellingham, WA									
<u>PROSECUTING ATTYS:</u>	David S. McEachran, Prosecuting Attorney Whatcom County Prosecutor's Office Whatcom County Courthouse 311 Grand Avenue Bellingham, WA 98225 (360) 676-6784									
<u>APPELLANT'S ATTYS:</u>	<table border="0"> <tr> <td colspan="2">(Direct Appeal, Washington Supreme Court #64085-8)</td> </tr> <tr> <td>Michael P. Iaria Seattle, WA</td> <td>Meredith Martin Rountree Austin, TX</td> </tr> <tr> <td>Rita Griffith Seattle, WA</td> <td>Charlotte Cassady (Withdrew 03/06/98) Mobile, AL</td> </tr> <tr> <td colspan="2">Jon Ostlund (06/17/96) Bellingham, WA</td> </tr> </table>		(Direct Appeal, Washington Supreme Court #64085-8)		Michael P. Iaria Seattle, WA	Meredith Martin Rountree Austin, TX	Rita Griffith Seattle, WA	Charlotte Cassady (Withdrew 03/06/98) Mobile, AL	Jon Ostlund (06/17/96) Bellingham, WA	
(Direct Appeal, Washington Supreme Court #64085-8)										
Michael P. Iaria Seattle, WA	Meredith Martin Rountree Austin, TX									
Rita Griffith Seattle, WA	Charlotte Cassady (Withdrew 03/06/98) Mobile, AL									
Jon Ostlund (06/17/96) Bellingham, WA										
<u>PETITIONER'S ATTYS:</u>	<table border="0"> <tr> <td colspan="2">(Personal Restraint Petition, Washington Supreme Court #70233-1)</td> </tr> <tr> <td>Jeffrey E. Ellis The Defender Association 810 Third Avenue Suite 800 Seattle, WA 98104-1655 (206) 447-3900</td> <td>Meredith Martin Rountree 510 South Congress Avenue Suite 308 Austin, TX 78704-1739 (512) 320-0334</td> </tr> </table>		(Personal Restraint Petition, Washington Supreme Court #70233-1)		Jeffrey E. Ellis The Defender Association 810 Third Avenue Suite 800 Seattle, WA 98104-1655 (206) 447-3900	Meredith Martin Rountree 510 South Congress Avenue Suite 308 Austin, TX 78704-1739 (512) 320-0334				
(Personal Restraint Petition, Washington Supreme Court #70233-1)										
Jeffrey E. Ellis The Defender Association 810 Third Avenue Suite 800 Seattle, WA 98104-1655 (206) 447-3900	Meredith Martin Rountree 510 South Congress Avenue Suite 308 Austin, TX 78704-1739 (512) 320-0334									

DATE            CAUSE            ACTION

(Federal Habeas Corpus, USDC WDC #C08-0053)  
**JEFFREY E. ELLIS**  
**LAW OFFICE OF ALSEPT & ELLIS**  
**621 SW MORRISON ST, SUITE 1025**  
**PORTLAND, OR 97205-3813**  
**(206) 218-7076**

**ROBERT GOMBINER**  
**LAW OFFICES OF GOMBINER**  
**119 1<sup>ST</sup> AVENUE, SUITE 500**  
**SEATTLE, WA 98104**  
**(206) 621-8777**

Steven Witchley (withdrew 8/29/12)  
Seattle, WA

RESPONDENT'S ATTYS:

(Personal Restraint Petition, Washington Supreme Court #70233-1)  
David S. McEachran, Prosecuting Attorney

(Federal Habeas Corpus, USDC WDC #C08-0053)  
**ROBERT M. MCKENNA, ATTORNEY GENERAL**  
**GREGORY J. ROSEN, ASSISTANT ATTORNEY GENERAL**  
**RONDA D. LARSON, ASSISTANT ATTORNEY GENERAL**  
**CORRECTIONS DIVISION**  
**PO BOX 40116**  
**OLYMPIA, WA 98504-0116**  
**(360) 586-1445**

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. <i>State v. Elmore</i> , 139 Wn.2d 250, 985 P.2d 289 (1999)
10/02/00	99-9587 USSC	Petition for Writ of Certiorari denied, <i>Elmore v. Washington</i> , 531 U.S. 837, 121 S. Ct. 98, 148 L. Ed. 2d 57 (2000)
10/09/00	64095-8 WSSC	Mandate issued
10/10/00	70233-1 WSSC	Motion for Appointment of Counsel and for Stay of Execution Pursuant to Rules 16.24 and 16.25 of the Rules of Appellate Procedure
10/31/00	95-1-00310-1	Death Warrant (setting execution for November 28, 2000)
11/07/00	70233-1 WSSC	Notation Order (motion for stay of execution is granted)
06/29/01	70233-1 WSSC	Petitioner's Personal Restraint Petition and Brief in Support
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)

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
06/05/03	70233-1 WSSC	Order (Petitioner has not established facts that give rise to a substantial reason to believe that the renewed motion for appointment of attorney expert and renewed motion for funds to hire an investigator will produce information that would support relief under RAP 16.4(c). The order for the reference hearing does not require the trial court to make a legal conclusion regarding the adequacy of trial counsel's performance. The trial court is directed to find the facts regarding the performance of trial counsel, leaving for this court the determination whether trial counsel's performance was legally adequate. Therefore, no funds are authorized for attorney experts or an investigator. The request to file this order under seal is denied)
01/27/05	70233-1 WSSC	Trial Court Findings of Fact
11/21/07	70233-1 WSSC	Opinion denying personal restraint petition. Justice Madsen authored the opinion for the Court. Justice Sanders dissented. <i>In re Elmore</i> , 162 Wn.2d 236, 172 P.3d 335 (2007)
12/03/07	70233-1 WSSC	Cost Bill (\$238,315.31 to be paid to OPD, \$7,643.22 to Whatcom County)
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
12/19/08	C08-0053 WDC	Respondent's Answer and Memorandum of Authorities
03/13/09	C08-0053 WDC	Petitioner's Traverse and Reply
09/30/09	C08-0053 WDC	Motion for Evidentiary Hearing
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
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
08/21/12	C08-0053 WDC	Order Denying Motion to Clarify
08/29/12	12-99003 9 CIR	Order (Attorney Steven Witchley withdrawn as counsel and Attorney Robert Gombiner assigned as co-counsel for Petitioner)
10/19/12	12-99003 9 CIR	Motion for Certificate of Appealability; Motion for Permission to File Overlength Motion for Certificate of Appealability
10/22/12	12-99003 9 CIR	Response to Motion to File Over-Length Motion for Certificate of Appealability

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
10/31/12	12-99003 9 CIR	Order (Motion to File Overlength Certificate of Appealability granted; response due December 14, 2012)

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

DATE            CAUSE            ACTION

RESPONDENT'S ATTYS:

(Federal Habeas Corpus, USDC WDC #C99-0289L, 9<sup>th</sup> Cir # 09-99021)  
**ROBERT M. MCKENNA, 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	<i>State v. Gentry</i> ; Notice of Appeal
11/09/93	58415-0 WSSC	Oral argument held
01/06/95	58415-0 WSSC	Opinion (affirming conviction and sentence of death). Majority opinion authored by Justice Andersen. Justices Utter, Johnson and Madsen dissented. <i>State v. Gentry</i> , 125 Wn.2d 570, 888 P.2d 1105 (1995)
10/02/95	94-9582 USSC	Petition for Writ of Certiorari denied. <i>Gentry v. Washington</i> , 516 U.S. 843, 116 S. Ct. 131, 133 L. Ed. 2d 79 (1995)
10/05/95	58415-0 WSSC	Mandate issued
11/02/95	88-1-00395-3	Death Warrant (setting execution for December 5, 1995)
11/14/95	58415-0 WSSC	Order staying execution date of December 5, 1995 pending certificate of finality or further order of the court
12/15/95	62677-4 WSSC	Order appointing counsel
02/18/99	62677-4 WSSC	Opinion denying personal restraint petition. Justice Talmadge authored the opinion for the Court. Justice Sanders, joined by Justice Johnson, dissented in part. <i>In re Gentry</i> , 137 Wn.2d 378, 972 P.2d 1250 (1999)
06/30/99	62677-4 WSSC	Order (Petitioner's motion for reconsideration is denied); Order Changing Opinion; Order (Respondent's motion, to dissolve the stay of execution upon issuance of the certificate of finality, is granted)
07/19/99	C99-0289 WDC	Order (staying execution of Jonathan Lee Gentry)
07/21/99	62677-4 WSSC	Certificate of Finality
07/26/99	62677-4 WSSC	Order (awarding costs in the total amount of \$178,869.57)
10/22/99	C99-0289 WDC	Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254
01/24/00	C99-0289 WDC	Respondent's Answer and Memorandum of Authorities
01/24/00	C99-0289 WDC	First Amended Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. §2254
02/11/00	C99-0289 WDC	Respondent's Amended Answer and Memorandum of Authorities

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
07/12/01	C99-0289 WDC	Order Regarding Exhaustion of Claims (the following claims presented were in fact exhausted in the Washington courts and may be considered here: (1) the <i>Brady/Napue</i> claim regarding Brian Dyste; (2) the victim impact statement claims; (3) the claim regarding the admission of petitioner's previous conviction; and (4) the juror exclusion claim. The following claims were unexhausted and cannot be considered here: (1) the <i>Brady/Napue</i> claims regarding Leonard Smith, Timothy Hicks, and detective misconduct; and (2) the ineffective assistance of counsel claims.)
08/30/01	C99-0289 WDC	Order for Clarification of Exhaustion Order; Order Deferring Motion to Conduct Discovery
07/02/03	C99-0289 WDC	Order Regarding Procedural Default (the claims identified as unexhausted in the Court's Order of Clarification [08/30/01] are now procedurally barred; directing the parties to file memoranda regarding cause and prejudice)
03/26/04	C99-0289 WDC	Order Regarding Cause and Prejudice (reconsidering <i>sua sponte</i> , and reversing, the Court's prior decision that the <i>Brady/Napue</i> claims concerning Timothy Hicks and Detectives Wright and Wagner are unexhausted and procedurally defaulted; reserving ruling as to whether Gentry has shown cause for his default regarding the Leonard Smith claims pending an evidentiary hearing; concluding that Gentry has failed to show cause to excuse his default of the penalty phase ineffective assistance claim; denying Gentry's motion to strike)
08/03/05	C99-0289 WDC	Order Regarding Discovery and Evidentiary Hearing (granting Petitioner's request to conduct depositions of Brian Moran, Timothy Hicks, Brian Dyste, Detective Wright, Detective Wagner, and CCO Karen Adams; denying Respondent's request for depositions; scheduling evidentiary hearing on Petitioner's <i>Brady/Napue</i> claims)
03/6-9/06	C99-0289 WDC	Evidentiary hearing held
03/15/06	C99-0289 WDC	Minute Order (the Court has conducted an in camera review of witness Jan Mahan's taped interview and written notes from her subsequent telephone conversation with Brian Dyste. The Court concludes that the <i>Gentry</i> case is never mentioned or referenced in these materials and that they have no bearing on this proceeding).
08/28/06	C99-0289 WDC	Order on Motion for Summary Judgment (denying Petitioner's motion for summary judgment re: claim A [dismissal of juror for cause])
09/04/08	C99-0289 WDC	Order on Petition for Habeas Relief Based on <i>Brady</i> and <i>Napue</i> Violations (denying habeas relief).
09/05/08	C99-0289 WDC	Order on <i>Brady/Napue</i> Claims Regarding Leonard Smith (denying habeas relief); Order Denying Petitioner's Motion for Evidentiary Hearing on Denial of Effective Assistance of Counsel Due to Failure to Investigate
09/15/08	C99-0289 WDC	Order Granting Respondent's Motion for Summary Judgment, Denying Petitioner's Cross-Motion for Summary Judgment, and Order Denying Amended Habeas Petition. <i>Gentry v. Sinclair</i> , 576 F. Supp. 2d 1130 (2008).
03/23/09	C99-0289 WDC	Order Denying Motion for Reconsideration. <i>Gentry v. Sinclair</i> , 609 F. Supp. 2d 1179 (2009).
04/23/09	C99-0289 WDC	Judgment in a Civil Case
04/24/09	C99-0289 WDC	Order Denying Motion to Supplement Motions for Reconsideration; Amended Judgment in a Civil Case
05/22/09	C99-0289 WDC	Order Denying Motion for New Trial or to Amend Judgment

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
05/26/09	C99-0289 WDC	Notice of Appeal
10/02/09	C99-0289 WDC	Order Granting Certificate of Appealability
12/30/09	84039-3 WSSC	Personal Restraint Petition [Second] [challenge to conditions of confinement]; Declarations of Jennifer Davis and Timothy Ford
03/02/10	84039-3 WSSC	Response of the Department of Corrections
04/05/10	84039-3 WSSC	Petitioner's Reply to Response of the Department of Corrections
06/08/10	09-99021 9CIR	Opening Brief of Appellant
06/29/10	84039-3 WSSC	Supplement to Personal Restraint Petition
11/18/10	09-99021 9 CIR	Brief of Respondent-Appellee
12/30/10	84039-3 WSSC	Opinion denying personal restraint petition. Chief Justice Madsen authored the opinion for the Court. Justice Stephens, joined by Justice Sanders, dissented. <i>In re Gentry</i> , 170 Wn.2d 711, 245 P.3d 766 (2010).
01/04/11	09-99021 9 CIR	Reply Brief of Appellant
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; Motion for Leave to Proceed <i>In Forma Pauperis</i> ; Affidavit in Support of Motion to Proceed on Appeal <i>In Forma Pauperis</i>
07/25/11	88-1-00395-3	Order Granting Post-Conviction DNA Testing
09/01/11	09-99021 9 CIR	Order (directing the parties to file supplemental briefs, addressing the following issues: (1) Did Gentry in the district court and in this Court properly raise a claim that he was prosecuted, convicted, and sentenced to death based upon his race and, if properly raised, does the claim have merit?; and (2) What impact, if any, does <i>Cullen v. Pinholster</i> , 131 S. Ct. 1388 (2011), have on this appeal?)
09/15/11	10-10814 USSC	Respondent's Brief in Opposition
09/23/11	10-10814 USSC	Reply to Brief in Opposition
09/30/11	09-99021 9 CIR	Supplemental Brief of Respondent-Appellee
10/10/11	86585-0 WSSC	Personal Restraint Petition [Third]; Declaration of Timothy K. Ford; Motion for Appointment of Counsel; Statement of Finances Regarding Personal Restraint Petition
10/17/11	10-10814 USSC	Order denying petition for writ of certiorari. <i>Gentry v. Sinclair</i> , 132 S. Ct. 453 (2011).
10/21/11	09-99021 9 CIR	Supplemental Brief of Appellant

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
11/17/11	09-99021 9 CIR	Oral argument held
01/06/12	86585-0 WSSC	Order (Petitioner's Motion to Consider Record from Direct Appeal is Granted)
02/09/12	58415-0 WSSC	Order (Motion for order extending release of exhibits is granted; exhibits due back to WSSC on June 30, 2012)
04/05/12	86585-0 WSSC 58415-0 WSSC	Response to Personal Restraint Petition and Motion to Reconsider Appeal
05/18/12	88-1-00395-3	Order Permitting Release of Trial Exhibit 69 for Preliminary Inspection by Microscopists
05/30/12	58415-0 WSSC	Order (The motion for order modifying order approving release of evidence is granted upon the conditions as specifically specified in the Grounds For Relief portion of the "Motion For Order Modifying Order Approving Release Of Evidence".)
06/07/12	86585-0 WSSC	Order (The Motion for Appointment of Counsel is granted and Tim Ford and Rita Griffith are appointed as counsel for the Petitioner in this matter.)
08/09/12	86585-0 WSSC	Petitioner/Appellant's Reply Brief
08/17/12	58415-0 WSSC	Stipulated Motion for Order Extending Release of Exhibits to the Washington State Crime Laboratory
08/28/12	09-99021 9 CIR	Opinion affirming the judgment of the district court. Judge Clifton authored the opinion, with Judges Fisher and Paez concurring. <i>Gentry v. Sinclair</i> , 693 F.3d 867 (9 Cir. 2012).
09/28/12	09-99021 9 CIR	Petition for Rehearing and Rehearing En Banc; Appellant's Motion for Leave to File Overlength Petition for Rehearing and Petition for Rehearing En Banc
10/02/12	09-99021 9 CIR	Order (Motion to file overlength petition is granted)
10/05/12	58415-0 WSSC	Order (stipulated motion for order extending release of exhibits is granted)
10/10/12	86585-0 WSSC	Motion to Set Oral Argument, or to Remand for Supplementation of the Record or a Reference Hearing, In Light of <i>State v. Davis</i> , __ Wn.2d. __ (Sept. 20, 2012)
10/12/12	86585-0 WSSC	Order (Respondent is directed to file an answer to the motion to set oral argument or for remand by October 18, 2012)
10/18/12	86585-0 WSSC	Order (Honorable Lisa Worswick is appointed as Supreme Court Justice Pro Tem for all proceedings having to do with the resolution of this case)
10/22/12	86585-0 WSSC	Reply Re: Motion to Set Oral Argument, or Remand for Supplementation of the Record or a Reference Hearing
10/23/12	86585-0 WSSC	State's Motion for Extension of Time to Respond to Petitioner's Motion
10/23/12	86585-0 WSSC	Order (State's motion for extension of time is granted; answer to motion to set oral argument or for remand due October 31, 2012)
10/26/12	86585-0 WSSC 58415-0 WSSC	Amended Order (appointment Hon. Lisa Worswick as a pro tem justice in this case for all proceedings having to do with the resolution of this case and #58415-0 - <i>State v. Gentry</i> )

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
11/01/12	86585-0 WSSC	State's Response to Motion to Set Oral Argument, Etc. and State's Motion to Strike Portions Thereof
11/07/12	86585-0 WSSC	<b>State's Reply Re Its Motion to Strike Portions</b>
11/07/12	86585-0 WSSC	<b>Petitioner's Reply to Response to Motion to Set Oral Argument or Reference Hearing, and Response to Motion to Strike Portions Thereof</b>

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
<u>NAME:</u>		GREGORY, Allen Eugene D.O.B.: June 9, 1972 Race: Black
<u>DATE OF CRIME:</u>		July 27, 1996
<u>PLACE OF CRIME:</u>		Pierce County
<u>BRIEF FACTS:</u>		Allen Eugene Gregory was convicted on retrial of one count of aggravated first degree murder for the stabbing death of his neighbor, Geneine Harshfield. The aggravating circumstances were that the murder was committed: (1) in the course of or furtherance of Robbery in the First Degree, and (2) in the course of or furtherance of Rape in the First or Second Degree. <i>State v. Gregory</i> , Pierce County Cause No. 98-1-04967-9.
<u>DATE OF CONVICTION:</u>		May 15, 2012
<u>SPECIAL SENTENCING:</u>		June 13, 2012
<u>JUDGMENT AND SENTENCE:</u>		Pierce County Superior Court Cause No. 98-1-04967-9
<u>TRIAL JUDGE:</u>		Honorable Rosanne Buckner
<u>DEFENSE ATTYS:</u>		Zenon Olbertz Brett A. Purtzer Tacoma, WA
<u>PROSECUTING ATTYS:</u>		Mark Lindquist, Prosecuting Attorney John Neeb, Deputy Prosecuting Attorney Pierce County Prosecutor's Office County-City Building 930 Tacoma Avenue South, Room 946 Tacoma, WA 98402-2102 (253) 798-7400
<u>APPELLANT'S ATTYS:</u>		(Direct Appeal, WSSC No. 88086-7) <b>ZENON P. OLBERTZ</b> <b>BRETT A. PURTZER</b> <b>ATTORNEYS AT LAW</b> <b>1008 YAKIMA AVENUE, STE 302</b> <b>TACOMA, WA 98405-4850</b> <b>(253) 272-9967</b>
<u>RESPONDENT'S ATTYS:</u>		(Direct Appeal, WSSC No. 88086-7) <b>MARK LINDQUIST, PROSECUTING ATTORNEY</b> <b>KATHLEEN PROCTOR, DEPUTY PROSECUTOR</b> <b>930 TACOMA AVE S, RM 946</b> <b>TACOMA, WA 98402-2171</b> <b>(253) 798-7400</b>
<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
11/30/06	71155-1 WSSC	Opinion reversing conviction for the rape of R.S., affirming the aggravated first degree murder conviction for the murder of G.H., reversing the death sentence, and remanding for

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
		resentencing in the murder case. Justice Bridge authored the opinion for the Court. Justice Sanders filed a dissenting opinion. <i>State v. Gregory</i> , 158 Wash.2d 759, 147 P.3d 1201 (2006)
06/13/12	98-1-04967-9	Judgment and Sentence
11/09/12	98-1-04967-9	<b>Notice of Appeal to the Washington State Supreme Court</b>
11/09/12	88086-7 WSSC	<b>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</b>

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
<u>NAME:</u>		SCHIERMAN, Conner Michael D.O.B.: September 14, 1981 Race: Caucasian
<u>DATE OF CRIME:</u>		July 16, 2006, or early morning July 17, 2006
<u>PLACE OF CRIME:</u>		King County
<u>BRIEF FACTS:</u>		Conner Schierman was convicted of four counts of aggravated first degree murder in the deaths of Olga Milkin, 28; her sons Justin, 5, and Andrew, 3; and Milkin's sister, Lyubov Botvina, 24. The aggravating circumstances were (1) there was more than one victim, and (2) the murders were committed to protect or conceal the identity of the perpetrator of a crime. <i>State v. Schierman</i> , King County Superior Court Cause No. 06-1-06563-4.
<u>DATE OF CONVICTION:</u>		April 12, 2010
<u>SPECIAL SENTENCING:</u>		May 5, 2010
<u>JUDGMENT AND SENTENCE:</u>		King County Superior Court Cause No. 06-1-06563-4 May 27, 2010
<u>TRIAL JUDGE:</u>		Honorable Greg Canova
<u>DEFENSE ATTYS:</u>		James Conroy Peter Connick Seattle, WA
<u>PROSECUTING ATTYS:</u>		Dan Satterberg, Prosecuting Attorney Scott O'Toole, Senior Deputy Prosecutor King County Courthouse 516 Third Avenue Seattle, WA 98104 (206) 296-0100
<u>APPELLANT'S ATTYS:</u>		(Direct Appeal, WSSC No. 84614-6) <b>SUZANNE ELLIOTT</b> <b>DAVID ZUCKERMAN</b> <b>ATTORNEYS AT LAW</b> <b>705 2<sup>ND</sup> AVENUE, SUITE 1300</b> <b>SEATTLE, WA 98104-1797</b> <b>(206) 623-0291</b>
<u>RESPONDENT'S ATTYS:</u>		(Direct Appeal, WSSC No. 84614-6) <b>DAN SATTERBERG, PROSECUTING ATTORNEY</b> <b>SCOTT O'TOOLE, SENIOR DEPUTY PROSECUTOR</b> <b>KING COUNTY COURTHOUSE</b> <b>516 THIRD AVENUE</b> <b>SEATTLE, WA 98104</b> <b>(206) 296-0100</b>

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
06/01/10	84614-6 WSSC	Judgment and Sentence
06/01/10	84614-6 WSSC	Notice of Appeal; Motion for Order of Indigency and Affidavit in Support of Motion
06/02/10	84614-6 WSSC	Order Authorizing Appeal <i>In Forma Pauperis</i> , Appointment of Counsel and Preparation of Records
06/23/10	84614-6 WSSC	Order (Suzanne Elliott is appointed as lead counsel and David Zuckerman is appointed as co-counsel.)
06/24/10	84614-6 WSSC	Clerk's Notice of Final List of Proceedings in Capital Case
07/29/10	84614-6 WSSC	Objection to County Clerk's List of Proceedings
09/23/10	84614-6 WSSC	AMENDED Clerk's Notice of Final List of Proceedings in Capital Case
10/04/10	84614-6 WSSC	AMENDED Clerk's Notice of Final List of Proceedings in Capital Case
10/18/10	84614-6 WSSC	Renewed Objection to County Clerk's List of Proceedings and Motion to Accept the Attached List as the "Final List"
11/02/10	84614-6 WSSC	Response to and Concurrence with Petitioner's Renewed Objection to County Clerk's List of Proceedings and Motion to Accept Petitioner's Attached List as the "Final List"
12/09/10	84614-6 WSSC	Motion to Stay the DOC's Collection of Costs Specifically Waived by Trial Court Order
12/15/10	84614-6 WSSC	Order (The Court received the e-mail response of James M. Whisman regarding the Appellant's "Motion To Stay The DOC's Collection Of Costs Specifically Waived By The Trial Court Order." Further review of the motion, as well as a review of the status as to the actual parties in this matter, raises the issue as to whether or not the motion is properly filed in Supreme Court cause number 84614-6. First, it appears that the DOC is not a party to this action, nor would the challenge to its administrative interpretation and/or application of the terms of the trial court order regarding its apparent collections appear to be within the scope of the pending appeal. Accordingly, in that regard, the parties in this matter are directed to serve and file written comments (which may be in letter form) addressing whether or not the motion should be considered by this Court in this matter. Said comments should include citations to any authority in support of the position taken in the comments.)
12/27/10	84614-6 WSSC	Appellant's comments (via letter)
01/07/11	84614-6 WSSC	Respondent's comments
02/18/11	84614-6 WSSC	Motion to Correct or Supplement the Record Pursuant to RAP 9.9 and 9.10
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)
03/10/11	84614-6 WSSC	Response to Petitioner's Motion to Correct or Supplement the Record Pursuant to RAP 9.9 and 9.10
03/29/11	84614-6 WSSC	Reply on Motion to Correct or Supplement the Record Pursuant to RAP 9.9 and 9.10

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
04/29/11	84614-6 WSSC	Order (The "Renewed Objection To County Clerk's List Of Proceedings And Motion To Accept The Attached List As The 'Final List'" and "Motion To Correct Or Supplement The Record..." are remanded to the trial court for determination and for the trial court to settle the record on review in the matter.)
09/29/11	06-1-06563-4	Motion for Access to Juror Information GR 31(j)
10/13/11	84614-6 WSSC	Order (By order dated April 29, 2011, the "Renewed Objection To County Clerk's List Of Proceedings And Motion To Accept The Attached List As The 'Final List'" and "Motion To Correct Or Supplement The Record" were remanded to the trial court for determination and for the trial court to settle the record on review. Counsel are directed, by not later than October 24, 2011, to advise this Court of the status in the trial court as to the resolution of these matters.)
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.
11/08/11	06-1-06563-4	Response to Motion for Access to Juror Information GR 31(j)
11/09/11	06-1-06563-4	Order re Access to Juror Information GR 31(j)
12/13/11	06-1-06563-4	Order Denying Motion to Seal
12/13/11	06-1-06563-4	Motion for Court Appointment of Defense Expert
12/13/11	06-1-06563-4	Order for Expert Services
01/05/12	06-1-06563-4	Stipulation re Jury Policy and Jury Summons
01/09/12	84614-6 WSSC	Supplemental Designation of Clerk's Papers
01/25/12	06-1-06563-4	Stipulation re Jury Policy and Jury Summons
03/07/12	06-1-06563-4 84614-6 WSSC	Second Supplemental Designation of Clerk's Papers
03/13/12	06-1-06563-4	Declaration of Gregory Wheeler
06/27/12	06-1-06563-4 84614-6 WSSC	Third Supplemental Designation of Clerk's Papers

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>	
<u>NAME:</u>		WOODS, Dwayne D.O.B.: 07-04-69 Race: Black	
<u>DATE OF CRIME:</u>		April 27, 1996	
<u>PLACE OF CRIME:</u>		Spokane County	
<u>BRIEF FACTS:</u>		Dwayne Woods was convicted of two counts of aggravated first degree murder for the murders of Telisha Shaver (Count 1) and Jade Moore (Count 2). As to Count 1, the aggravating circumstances were: (1) the murder was committed to conceal the commission of a crime or to protect or conceal the identity of any person committing a crime; and (2) there was more than one victim and the murders were part of a common scheme or plan of the defendant. As to Count 2, the aggravating circumstances were: (1) [same as #1 above]; and (2) the murder was committed in the course of or in furtherance of the crime of first degree rape; and (3) [same as #2 for Count 1]. <i>State v. Woods</i> , Spokane County Superior Court Cause No. 96-1-01143-7.	
<u>DATE OF CONVICTION:</u>		June 20, 1997	
<u>SPECIAL SENTENCING:</u>		June 25, 1997	
<u>JUDGMENT AND: SENTENCE</u>		Spokane County Superior Court Cause No. 96-1-01143-7 July 23, 1997	
<u>TRIAL JUDGE:</u>		Honorable Michael E. Donohue	
<u>DEFENSE ATTYS:</u>		Richard Fasey James Sheehan James Ames Spokane, WA	
<u>PROSECUTING ATTYS:</u>		Steven Tucker, Prosecuting Attorney James R. Sweetser, prior counsel and former Prosecuting Attorney John F. Driscoll, Senior Deputy Prosecutor Spokane County Prosecutor's Office Public Safety Building West 1100 Mallon Avenue Spokane, WA 99260 (509) 477-3662	
<u>APPELLANT'S ATTYS:</u>		Lenell Rae Nussbaum Market Place Two 2001 Western Avenue Suite 200 Seattle, WA 98121-2163 (206) 728-0996	Joan M. Fisher Oliver W. Loewy Federal Public Defender - Id 317 West Sixth Street Suite 204 Moscow, ID 83843 (208) 883-0180
<u>PETITIONER'S ATTYS:</u>		(Personal Restraint Petition #71780-0) Lenell Rae Nussbaum Seattle, WA	Judith M. Mandel 524 Tacoma Ave. S. Tacoma, WA 98402-5416 (253) 272-5640

DATE            CAUSE            ACTION

(Federal Habeas Corpus, USDC EDC #CV-05-0319-LRS)

**SUZANNE LEE ELLIOTT**  
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**(206) 623-0291**

**DAVID ZUCKERMAN**  
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**SEATTLE, WA 98104**  
**(206) 623-1595**

RESPONDENT'S ATTYS:

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

(Federal Habeas Corpus, USDC EDC #CV-05-0319-LRS)  
**ROBERT M. MCKENNA, ATTORNEY GENERAL**  
**JOHN J. SAMSON, ASSISTANT ATTORNEY GENERAL**  
**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. <i>State v. Woods</i> , 143 Wn.2d 561, 23 P.3d 1046 (2001)
06/01/01	65585-5 WSSC	Cost Bill (\$50,975.71 to AIDF & \$535.01 to Spokane County Prosecutor)
08/20/01	01-5921 USSC	Petition for Writ of Certiorari
10/09/01	01-5921 USSC	Petition for Writ of Certiorari denied. <i>Woods v. Washington</i> , 534 U.S. 964, 122 S.Ct. 374, 151 L. Ed. 2d 285 (2001)
10/15/01	65585-5 WSSC	Mandate issued
11/27/01	96-1-01143-7	Death Warrant (setting execution for December 12, 2001)
11/27/01	71780-0 WSSC	Application for Stay of Execution Pursuant to RAP 16.24
11/27/01	71780-0 WSSC	Notation Order (the application for stay of execution is granted)
07/02/02	71780-0 WSSC	Order (the matter is referred to the Spokane County Superior Court to hold a hearing and enter findings in answer to the following questions: (1) Is it Woods' desire to pursue a post-conviction relief by means of a personal restraint petition? (2) If the answer is yes, is it Woods' desire to proceed <i>pro se</i> in preparing and filing such a petition? (3) If Woods' answer to question two is no, or is a conditional or qualified yes, are his present counsel willing to abide by Woods' instructions regarding issues to be raised in such a petition?)

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

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
01/24/12	96-1-01143-7	Status Conference Held (Judge Kathleen M. O'Connor)
01/27/12	96-1-01143-7	Order Appointing Attorney (Elliott & Zuckerman)
01/31/12	11-7978 USSC	Petitioner's Reply Brief
02/03/12	96-1-01143-7	Reply Re: DNA Testing
02/13/12	96-1-01143-7	Sur-Reply Memorandum in Opposition
02/15/12	96-1-01143-7	Supplemental and Clarifying Argument Re: DNA Testing
03/20/12	96-1-01143-7	Status Conference/Hearing held.
03/26/12	11-7978 USSC	Order (granting petition for writ of certiorari, vacating the judgment, and remanding to the Ninth Circuit for further consideration in light of <i>Martinez v. Ryan</i> .) <i>Woods v. Holbrook</i> , 132 S. Ct. 1819 (2012).
04/23/12	96-1-01143-7	Defendant's Supplemental Exhibit
05/17/12	09-99003 9 CIR	Order (parties are ordered to file supplemental briefs addressing the effect of the Supreme Court's ruling in <i>Martinez v. Ryan</i> .)
06/28/12	09-99003 9 CIR	Respondent's Supplemental Brief Re: <i>Martinez v. Ryan</i>
06/29/12	09-99003 9 CIR	Supplemental Brief of Petitioner-Appellant Regarding <i>Martinez v. Ryan</i> and <i>Sexton v. Cozner</i>
07/13/12	96-1-01143-7	Court's Memorandum Decision (granting Defendant's motion for DNA testing)
08/28/12	09-99003 9 CIR	Citation to Supplemental Authority Pursuant to Fed. R. App. P. 28(j)
08/30/12	09-99003 9 CIR	Response to Petitioner-Appellant's Letter Under Fed. R. App. P. 28(j)
10/02/12	09-99003 9 CIR	Order to Show Cause (directed at Attorney David Zuckerman)
10/04/12	09-99003 9 CIR	Response to Order to Show Cause
10/16/12	09-99003 9 CIR	Reply to Response to Order to Show Cause
<b>11/08/12</b>	<b>09-99003 9 CIR</b>	<b>Citation to Supplemental Authority Pursuant to Fed.R.App.P. 28(j)</b>

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
<u>NAME:</u>	YATES, Robert Lee, Jr. D.O.B.: May 27, 1952 Race: White	
<u>DATE OF CRIME:</u>	1997 and 1998	
<u>PLACE OF CRIME:</u>	Pierce County	
<u>BRIEF FACTS:</u>	Robert Lee Yates, Jr. was convicted of two counts of aggravated first degree murder for the murders of Melinda Mercer in 1997 and Connie LaFontaine Ellis in 1998. The aggravating circumstances were: (1) there was more than one victim and the murders were part of a common scheme or plan or the result of a single act of the defendant; (2) the murders were committed in the course of, in furtherance of, or in immediate flight from the crime of Robbery in the First Degree. <i>State v. Yates</i> , Pierce County Cause No. 00-1-03253-8.	
<u>DATE OF CONVICTION:</u>	September 19, 2002	
<u>SPECIAL SENTENCING:</u>	October 3, 2002	
<u>JUDGMENT AND: SENTENCE</u>	Pierce County Superior Court Cause No. 00-1-03253-8 October 9, 2002	
<u>TRIAL JUDGE:</u>	Honorable John McCarthy	
<u>DEFENSE ATTYS:</u>	Roger Hunko Port Orchard, WA	Mary Kay High Tacoma, WA
<u>PROSECUTING ATTYS:</u>	Gerald Horne, Prosecuting Attorney Jerry Costello, Deputy Prosecutor Barbara Corey-Boulet, Deputy Prosecutor 930 Tacoma Avenue South Tacoma, WA 98402 (253) 798-7400	
<u>APPELLANT'S ATTYS:</u>	(Direct Appeal, WSSC No. 73155-1) Gregory Link Thomas Kummerow Nancy Collins WA Appellate Project 1511 Third Avenue, Suite 701 Seattle, WA 98101-3635 (206) 587-2711  Roger Hunko (withdrew 11/04/02) Port Orchard, WA	
<u>PETITIONER'S ATTYS:</u>	(Personal Restraint Petition, WSSC No. 82101-1) <b>RONALD NESS ATTORNEY AT LAW 420 CLINE AVE PORT ORCHARD WA 98366-4604</b>	<b>JUDITH MANDEL ATTORNEY AT LAW POSTGRADUATE BLDG 300 D CHANG'AN SOUTH RD XI'AN SHAANXI PROVINCE ZZ 710063</b>

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
		<b>JEFFREY E. ELLIS</b> <b>OR CAPITAL RESOURCE CTR</b> <b>621 SW MORRISON ST, SUITE 1025</b> <b>PORTLAND, OR 97205-3813</b> <b>(206) 218-7076</b>
		<b>STEVE WITCHLEY</b> <b>ELLIS, HOLMES &amp; WITCHLEY PLLC</b> <b>705 SECOND AVENUE, SUITE 401</b> <b>SEATTLE, WA 98104</b> <b>(206) 262-0300</b>

RESPONDENT'S ATTYS: (Direct Appeal, WSSC No. 73155-1)  
Gerald Horne, Prosecuting Attorney  
Jerry Costello, Deputy Prosecutor  
Barbara Corey-Boulet, Deputy Prosecutor (Withdrawn 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**

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
10/17/02	73155-1 WSSC	Notice of Appeal
11/30/06	73155-1 WSSC	Oral argument held
09/27/07	73155-1 WSSC	Opinion affirming conviction and death sentence. Justice Owens authored the opinion for the Court. Justices Johnson and Chambers authored opinions concurring. Justice Sanders dissented. <i>State v. Yates</i> , 161 Wn.2d 714, 168 P.3d 359 (2007).
12/24/07	73155-1 WSSC	Order Denying Appellant's Motion for Reconsideration
01/03/08	73155-1 WSSC	Ruling on Cost Bill (Costs in the amount of \$173,254.08 are awarded to the Office of Public Defense and costs in the amount of \$183.56 are awarded to Respondent State of Washington, Pierce County, to be paid by Appellant Yates).
06/23/08	07-10069 USSC	Petition for Writ of Certiorari denied. <i>Yates v. Washington</i> , 128 S. Ct. 2964 (2008).
08/01/08	73155-1 WSSC	Mandate
09/05/08	00-1-03253-8	Death Warrant (setting execution date for September 19, 2008)
09/08/08	82101-1 WSSC	Application for Stay of Execution Under RAP 16.24(c)
09/10/08	82101-1 WSSC	Motion for Appointment of Counsel
09/11/08	82101-1 WSSC	Personal Restraint Petition (placeholder petition)
09/11/08	82101-1 WSSC	Order Granting Stay of Execution and Appointing Counsel
05/18/09	82101-1 WSSC	Petitioner's Statement of Grounds for Relief (requested to be filed under seal)
06/05/09	82101-1 WSSC	Order (Petitioner's motion to file petitioner's statement of grounds for direct relief under seal is denied. The motion itself will remain sealed. The petitioner's statement of grounds for relief is being returned to counsel)
06/15/09	82101-1 WSSC	Opening Brief in Support of Personal Restraint Petition

<u>DATE</u>	<u>CAUSE</u>	<u>ACTION</u>
08/03/09	82101-1 WSSC	Amended Personal Restraint Petition and Supporting Brief
06/28/10	82101-1 WSSC	State's Response to Personal Restraint Petition
07/13/10	82101-1 WSSC	Order (Motion for Acceptance of Corrected Brief granted)
09/27/10	82101-1 WSSC	Order (the Respondent's "Motion to have copy of Petition served upon Spokane County Prosecutor's Office to address claim that Petitioner received ineffective assistance of counsel to plead guilty in Spokane cases" is denied.)
11/10/10	82101-1 WSSC	Order (That Respondent's "Motion to Strike Improper Appendices to Petitioner's Brief and Corresponding Arguments" is granted. "Petitioner's Motion for the Testimony of Bruce Moran to Be Taken By Deposition" is denied. "Petitioner's Motion for Discovery of All Documents and Computer Programs Used to Generate Jury Pools in Pierce County" is denied.)
01/25/11	82101-1 WSSC	Petitioner's Reply Brief