CAPITAL PUNISHMENT CASE STATUS REPORT

September 3, 2013

|  |  |
| --- | --- |
| CAPITAL LITIGATION TEAM:  Timothy N. Lang, Division Chief  Paul D. Weisser, Senior Counsel  John J. Samson, Senior Counsel  Shaunna F. Carter, Paralegal  Kathy Jerenz, Paralegal | ROBERT W. FERGUSON  Attorney General  State of Washington  Corrections Division  P.O. Box 40116  Olympia, WA 98504-0116  (360) 586-1445 |

INTRODUCTION

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

INDEX

Page

CROSS, Dayva Michael 3

DAVIS, Cecil Emile 7

ELMORE, Clark Richard 10

GENTRY, Jonathan Lee 14

GREGORY, Allen Eugene 20

SCHERF, Byron Eugene 22

SCHIERMAN, Conner Michael 24

WOODS, Dwayne L. 27

YATES, Robert Lee, Jr. 31

KEY TO COURT ABBREVIATIONS

WSSC Washington State Supreme Court

EDC United States District Court for the Eastern District of Washington

WDC United States District Court for the Western District of Washington

9CIR United States Court of Appeals for the Ninth Circuit

USSC United States Supreme Court

NAME: CROSS, Dayva Michael

D.O.B.: September 19, 1959

Race: Caucasian

DATE OF CRIME: March 6, 1999

PLACE OF CRIME: King County

BRIEF FACTS: Dayva Michael Cross pleaded guilty to three counts of aggravated first degree murder for the stabbing deaths of his wife, Anouchka Baldwin, and two stepdaughters, Amanda Baldwin and Salome Holly. The aggravating circumstances were that there was more than one victim and the murders were part of a common scheme or plan or the result of a single act of the person*. State v. Cross*, King County Cause 99-1-02212-9.

DATE OF GUILTY PLEA: October 23, 2000

SPECIAL SENTENCING: May 7, 2001

JUDGMENT AND King County Superior Court

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

June 22, 2001

TRIAL JUDGE: Honorable Joan DuBuque

DEFENSE ATTYS: Mark Larranaga

Richard Warner

Seattle, WA

PROSECUTING ATTYS: Norm Maleng, Prosecuting Attorney

Don Raz, Senior Deputy Prosecutor

Tim Bradshaw, Deputy Prosecutor

King County Courthouse

516 Third Avenue, Suite W554

Seattle, WA 98104-2362

(206) 296-9000

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

Todd Maybrown Kathryn Ross

Seattle, WA Mukilteo, WA

pETITIONER’S ATTYS: (Personal Restraint Petition, Washington Supreme Court #79761-7)

**TODD MAYBROWN JAMES LOBSENZ**

**ALLEN HANSEN & MAYBROWN CARNEY BADLEY SPELLMAN**

**600 UNIVERSITY ST., SUITE 3020 701 5TH AVENUE, SUITE 3600**

**SEATTLE, WA 98101-4105 SEATTLE, WA 98104-7010**

**(206) 447-9681 (206) 622-8020**

RESPONDENT'S ATTYS: **DANIEL T. SATTERBERG, Prosecuting Attorney**

Timothy Bradshaw, Deputy (withdrew 01/24/03)

**DONALD RAZ, DEPUTY**

**james whisman, dEPUTY**

**RANDI J. AUSTELL, DEPUTY**

06/29/01 71267-1 WSSC Notice of Judgment and Sentence

06/22/04 71267-1 WSSC Oral argument held

03/30/06 71267-1 WSSC Opinion (affirming conviction and sentence of death). Majority opinion authored by Justice Chambers. Chief Justice Alexander filed a concurring opinion. Justice Madsen, joined by Justices Charles Johnson, Sanders, and Owens, dissented. *State v. Cross*, 156 Wn.2d 580, 132 P.3d 80 (2006).

04/06/06 71267-1 WSSC Cost Bill [$128,781 to be paid to OPD, $706.18 to King County]

11/06/06 06-6333 USSC Petition for Writ of Certiorari denied. *Cross v. Washington*, 549 U.S. 1022, 127 S. Ct. 559, 166 L. Ed. 2d 415 (2006).

11/30/06 71267-1 WSSC Mandate

12/19/06 71267-1 WSSC Amended Mandate

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

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

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

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

10/24/07 79761-7 WSSC Placeholder Petition

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

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

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

03/17/09 79761-7 WSSC Order (DOC’s motion for a protective order is granted on a temporary basis only. This temporary protective order will remain in effect pending further order of the Court)

04/03/09 79761-7 WSSC Order (Petitioner's motion for oral argument is granted only on the *Alford* plea issues. Oral argument will be heard on June 25, 2009. All other issues in this case are stayed pending resolution of the Alford plea issues)

05/11/09 79761-7 WSSC Supplemental Brief of Petitioner

06/03/09 79761-7 WSSC Brief of Amicus Curiae Washington Association of Criminal Defense Lawyers

06/08/09 79761-7 WSSC Supplemental Brief of Respondent Re: *Alford* 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: *Alford* 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 *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.*)*

12/08/09 79761-7 WSSC Reply Brief in Support of Personal Restraint Petition

02/12/10 79761-7 WSSC Order (Petitioner's motion for the appointment of Maria Fernanda Torres is denied but Ms. Torres may provide representation under the supervision of death penalty qualified counsel at public expense. The Respondent’s motion for a deadline is granted. Petitioner has 30 days from entry of this order to comply with this Court's November 6, 2009, discovery order. The Respondent's motion for 60 days from receipt of discovery to file any additional relevant briefing on the ineffective assistance of counsel claims, and the Petitioner's motion for 60 days to respond, are granted.)

06/25/10 79761-7 WSSC Order (The Respondent's motion to compel production is deferred pending further consideration of this court. Within 30 days of this order, the Petitioner shall provide this court with: (1) copies of any disputed documents, which shall be filed under seal, for this court's in camera review; and (2) a brief explaining why said documents should not be disclosed. The Respondent's request to clarify this court's November 10, 2008 order is denied without prejudice to a more specific future motion. The Respondent's motion for an extension of time is granted.)

09/27/10 79761-7 WSSC Order (Both the Respondent's motion to compel production of the 12 documents submitted for the Court's in camera review and its motion for compliance are denied.)

05/02/11 79761-7 WSSC Petitioner’s Reply Brief to State’s Supplemental Response to PRP (filed under seal); Second Declaration of Richard Warner; Second Declaration of Mark Larranaga; Declaration of Teresa A. McMahill

11/08/11 79761-7 WSSC Order (granting Respondent’s motion for permission to file discovery documents and temporarily sealing said documents subject to further order of the Court)

07/15/13 79761-7 WSSC Petitioner’s Statement of Additional Authorities

**09/05/13 79761-7 WSSC Order (Former justices Chambers, Alexander, and Sanders are appointed justices pro tempore in regards to the issues heard at oral argument)**

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**

**1908 E. Madison Street 1908 E. Madison Street**

**Seattle, WA 98122-2842 Seattle, WA 98122-2842**

**(206) 623-2488 (206) 623-2488**

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

Gilbert Levy Catherine Ann Chaney

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**

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

06/01/09 80209-2 WSSC Appellant's Opening Brief; Designation of Supplemental Exhibits

03/17/10 80209-2 WSSC Brief of Respondent; Motion to Strike Improper Appendices to Appellant’s Brief

05/28/10 80209-2 WSSC Reply Brief of Appellant

07/09/10 80209-2 WSSC Order (The State’s "Motion to Strike Improper Appendices to Appellant's Brief" is granted and the appendices are stricken from the Appellant's Brief, along with all references to those documents, and all argument based upon the contents of the documents.)

01/14/11 80209-2 WSSC Order (clarifying the Court's order of July 9, 2010)

01/19/11 80209-2 WSSC Brief of Amici Curiae (1) American Civil Liberties Union of Washington, (2) Washington Association of Churches, (3) Lutheran Public Policy of Washington State, and (4) Disability Rights Washington in Support of Appellant's Appeal filed

02/10/11 80209-2 WSSC Oral argument held

09/20/12 80209-2 WSSC Opinion (affirming conviction and sentence of death). Majority opinion authored by Justice Alexander. Justice Fairhurst, joined by Justices Wiggins and Stephens dissented. Justice Gonzales did not participate. *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)

04/05/13 12-9685 USSC Petition for Writ of Certiorari; Motion for Leave to Proceed *In Forma Pauperis*

06/10/13 12-9685 USSC Brief of Respondent Washington in Opposition

06/14/13 12-9685 USSC Reply of Petitioner

06/20/13 12-9685 USSC Distributed for Conference of September 30, 2013

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 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*. State v. Elmore*, Whatcom County Cause 95‑1‑00310‑1.

DATE OF GUILTY PLEA: July 6, 1995

SPECIAL SENTENCING: March 12, 1996

JUDGMENT AND Whatcom County Superior Court

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

May 3, 1996

TRIAL JUDGE: Honorable David Nichols

DEFENSE ATTYS: John Komorowski

Douglas Hyldahl

Bellingham, WA

PROSECUTING ATTYS: David S. McEachran, Prosecuting Attorney

Whatcom County Prosecutor's Office

Whatcom County Courthouse

311 Grand Avenue

Bellingham, WA 98225

(360) 676-6784

APPELLANT'S ATTYS: (Direct Appeal, Washington Supreme Court #64085-8)

Michael P. Iaria Meredith Martin Rountree

Seattle, WA Austin, TX

Rita GriffithCharlotte Cassady (Withdrew 03/06/98)

Seattle, WAMobile, AL

Jon Ostlund (06/17/96)

Bellingham, WA

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

Jeffrey E. Ellis Meredith Martin Rountree

Seattle, WA Austin, TX

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

**JEFFREY E. ELLIS ROBERT GOMBINER**

**LAW OFFICE OF ALSEPT & ELLIS LAW OFFICES OF GOMBINER**

**621 SW MORRISON ST, SUITE 1025 119 1ST AVENUE, SUITE 500**

**PORTLAND, OR 97205-3813 SEATTLE, WA 98104**

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

Steven Witchley (withdrew 8/29/12)

Seattle, WA

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

David S. McEachran, Prosecuting Attorney

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

**ROBERT W. FERGUSON, ATTORNEY GENERAL**

**JOHN J. SAMSON, SENIOR COUNSEL**

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

**CORRECTIONS DIVISION**

**PO BOX 40116**

**OLYMPIA, WA 98504-0116**

**(360) 586-1445**

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

Olympia, WA

DATE CAUSE ACTION

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

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

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

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

10/09/00 64095-8 WSSC Mandate issued

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

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

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

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

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

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

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

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

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

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

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

03/05/08 70233-1 WSSC Ruling on Cost Bill ($245,662.53 to be paid to OPD, $496.00 to Whatcom County); Certificate of Finality)

04/22/08 C08-0053 WDC First Amended Petition for Writ of Habeas Corpus

11/02/11 C08-0053 WDC Order (denying Petitioner’s motion for evidentiary hearing)

06/21/12 C08-0053 WDC Order Denying Petition for Habeas Corpus; Judgment in a Civil Case (certificate of appealability denied)

06/28/12 C08-0053 WDC Order Granting Respondent's Motion to Amend the Court's January 18, 2008, Order Staying Elmore's Execution

08/03/12 C08-0053 WDC Order Denying Reconsideration

08/10/12 C08-0053 WDC Petitioner’s Notice of Appeal

08/21/12 C08-0053 WDC Order Denying Motion to Clarify

10/19/12 12-99003 9 CIR Motion for Certificate of Appealability

12/14/12 12-99003 9 CIR Response to Petitioner's Motion for Certificate of Appealability

01/11/13 12-99003 9 CIR Reply in Support of Motion for Certificate of Appealability

05/14/13 12-99003 9 CIR Order (granting certificate of appealability on four claims and setting briefing schedule; Elmore’s brief is due July 16, 2013, State’s answering brief is due September 17, 2013)

06/06/13 12-99003 9 CIR Order (streamlined request for extension of time granted, opening brief due August 15, 2013)

07/30/13 12-99003 9 CIR Unopposed Motion for Extension of Time to File Opening Brief

07/31/13 12-99003 9 CIR Order (Appellant's motion for extension of time granted; Opening brief due 9/3/13)

**09/03/13 12-99003 9 CIR Appellant's Opening Brief; Motion for Permission to File Overlength Opening Brief**

**09/04/13 12-99003 9 CIR Response to Motion to File Over-Length Brief**

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

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 *State v. Gentry*; Notice of Appeal

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

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

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

10/05/95 58415-0 WSSC Mandate issued

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

11/14/95 58415-0 WSSC Order staying execution 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. *In re Gentry*, 137 Wn.2d 378, 972 P.2d 1250 (1999)

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

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

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

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

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

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

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

02/11/00 C99-0289 WDC Respondent's Amended Answer and Memorandum of Authorities

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 *Brady/Napue* 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 *Brady/Napue* 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 *sua sponte*, and reversing, the Court’s prior decision that the *Brady*/*Napue* 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 *Brady/Napue* 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 *Gentry* 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 *Brady* and *Napue* Violations (denying habeas relief).

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

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

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

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

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

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

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

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

12/30/09 84039-3 WSSC Personal Restraint Petition [Second] [challenge to conditions of confinement]; Declarations of Jennifer Davis and Timothy Ford

03/02/10 84039-3 WSSC Response of the Department of Corrections

04/05/10 84039-3 WSSC Petitioner's Reply to Response of the Department of Corrections

12/30/10 84039-3 WSSC Opinion denying personal restraint petition. Chief Justice Madsen authored the opinion for the Court. Justice Stephens, joined by Justice Sanders, dissented. *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]; Motion for Leave to Proceed *In Forma Pauperis*; Affidavit in Support of Motion to Proceed on Appeal *In Forma Pauperis*

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 *Cullen v. Pinholster*, 131 S. Ct. 1388 (2011), have on this appeal?)

09/15/11 10-10814 USSC Respondent's Brief in Opposition

09/23/11 10-10814 USSC Reply to Brief in Opposition

09/30/11 09-99021 9 CIR Supplemental Brief of Respondent-Appellee

10/10/11 86585-0 WSSC Personal Restraint Petition [Third]; Declaration of Timothy K. Ford; Motion for Appointment of Counsel; Statement of Finances Regarding Personal Restraint Petition

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

10/21/11 09-99021 9 CIR Supplemental Brief of Appellant

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

02/09/12 58415-0 WSSC Order (Motion for order extending release of exhibits is granted; exhibits due back to WSSC on June 30, 2012)

04/05/12 86585-0 WSSC Response to Personal Restraint Petition and Motion to Reconsider Appeal

58415-0 WSSC

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. *Gentry v. Sinclair,* 693 F.3d 867 (9th Cir. 2012).

09/28/12 09-99021 9 CIR Petition for Rehearing and Rehearing En Banc

10/05/12 58415-0 WSSC Order (stipulated motion for order extending release of exhibits is granted)

10/26/12 86585-0 WSSC Amended Order (appointment Hon. Lisa Worswick as a pro tem justice in this case

58415-0 WSSC for all proceedings having to do with the resolution of this case and #58415-0 - *State v. Gentry*)

12/13/12 86585-0 WSSC Order (The State's motion to strike portions of the Petitioner's "Motion to Set Oral Argument, or to Remand for Supplementation of the Record or a Reference Hearing, in Light of State v. Davis" is granted. The Petitioner's motion to set oral argument is denied. The Petitioner's motion to remand for supplementation of the record or for a reference hearing is denied as moot based on the granting of the State's motion to strike. The remaining issues will be considered by the court without oral argument and an opinion will be issued in due course.)

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

01/31/13 58415-0 WSSC Order (That the stipulated motion for order extending release of exhibits to the Washington State Crime Laboratory until June 30, 2013, is granted)

04/30/13 86585-0 WSSC Order (Hon. James Verellen is appointed as a Supreme Court Justice pro tem for all proceedings having to do with the resolution of this case.)

05/15/13 12-10321 USSC Petition for Writ of Certiorari; Motion for Leave to Proceed In Forma Pauperis

05/24/13 86585-0 WSSC Motion for Leave to File an Amicus Brief and Motion to File Overlength Brief of American Civil Liberties Union and American Civil Liberties Union of Washington; Motion for Leave to File Brief Amicus Curiae of the NAACP Legal Defense & Educational Fund, Inc. in Support of Petitioner

06/04/13 86585-0 WSSC Order (Motions to file amicus briefs granted however motion to file overlength brief denied, corrected brief due June 6, 2013. Answers to amicus briefs due June 14, 2013.)

06/04/13 86585-0 WSSC Amicus Curiae Brief of the NAACP Legal Defense & Educational Fund, Inc.

06/06/13 86585-0 WSSC Brief of Amici Curiae American Civil Liberties Union and American Civil Liberties Union of Washington

06/14/13 86585-0 WSSC Petitioner's Response to Amicus Curiae Briefs of the NAACP Legal Defense & Educational Fund, Inc. and the American Civil Liberties Union

06/14/13 86585-0 WSSC State’s Answer to Brief of Amici Curiae American Civil Liberties Union & American Civil Liberties Union of Washington

06/17/13 86585-0 WSSC State’s Answer to Brief of Amicus Curiae NAACP, Legal Defense & Educational Fund, Inc.

06/17/13 86585-0 WSSC State's Motion to Strike Appendix to Gentry's Brief in Response to Briefs of Amici

06/19/13 86585-0 WSSC Petitioner's Motion to Strike Statistical Arguments in State's Response to Amici

06/20/13 86585-0 WSSC Petitioner's Response to the State's Motion to Strike Filed June 17, 2013

06/21/13 86585-0 WSSC State's Reply Re: Motion to Strike Appendix to Gentry's Brief in Response to Briefs of Amici; State's Response to Gentry's Motion to Strike Statistical Arguments

06/24/13 86585-0 WSSC Petitioner's Reply on Alternative Motion to Strike Statistical Information Filed June 19, 2013

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

07/15/13 12-10321 USSC Brief in Opposition

07/16/13 86585-0 WSSC State's Motion to Strike Appendix to Gentry's Brief in Response to Briefs of Amici

07/16/13 88-1-00395-3 State’s Motion to Deny Further Post-Conviction DNA Testing

07/17/13 86585-0 WSSC State's Motion to Supplement the Record

07/22/13 86585-0 WSSC Petitioner's Response to State's "Motion to Strike" Filed July 16, 2013

07/24/13 86585-0 WSSC State's Reply to Gentry's Purported Response to Motion to Strike

07/31/13 12-10321 USSC Reply to Brief in Opposition

**08/01/13 86585-0 WSSC Petitioner's Response to State's Motion to Supplement Filed July 17, 2013**

**08/12/13 86585-0 WSSC State's Reply Re Motion to Supplement the Record**

**08/29/13 12-10321 USSC Petitioner's Supplemental Brief**

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)

**MARK LINDQUIST, PROSECUTING ATTORNEY**

**KATHLEEN PROCTOR, DEPUTY PROSECUTOR**

**930 TACOMA AVE S, RM 946**

**TACOMA, WA 98402-2171**

**(253) 798-7400**

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

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

11/09/12 98-1-04967-9 Notice of Appeal to the Washington State Supreme Court

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

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

02/04/13 88086-7 WSSC Objections to List of Hearings to be Transcribed and Proposed Amendments; Motion to Transfer Record

02/11/13 88086-7 WSSC State's Opposition to Motion to Transfer Record from the Prior Appeal to this Case

02/22/13 88086-7 WSSC Reply to State's Opposition to Motion to Transfer Record

03/04/13 88086-7 WSSC Supplemental Documents Related to Motion to Transfer Record

03/13/13 88086-7 WSSC Order (Motion to transfer record denied)

**08/12/13 88086-7 WSSC Motion to Release Sealed Transcripts to Counsel for Appellant**

**08/21/13 88086-7 WSSC Order (setting briefing schedule; Opening brief due December 19, 2013, Answering brief due 120 days after receipt of opening brief)**

**08/26/13 88086-7 WSSC State's Response to "Motion to Release Sealed Transcripts to Counsel for Appellant”**

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**

**KING COUNTY COURTHOUSE**

**3000 ROCKEFELLER AVE**

**EVERETT, WA 98201-4060**

**(425) 388-3333**

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 is appointed as lead counsel and Mark Larranaga is appointed as co-counsel to represent Byron Eugene Scherf in this appeal, to be paid for by the Office of Public Defense in accordance with the established presumptive contract fee amount.)

06/25/13 88906-6 WSSC Notation Letter (setting Clerk’s Conference set for July 31, 2013 and listing agenda of items to be discussed)

**08/30/13 88906-6 WSSC Pleading dated August 27, 2013 (the Appellant requests to stop the "general" review of conviction and/or sentence, expedite the mandatory sentence review, and expedite the death sentence imposed); Strike and Withdraw Notice of Appeal**

**09/03/13 88906-6 WSSC Response of Petitioner’s Counsel to Pleading dated August 27, 2013**

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 Greg 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**

**JAMES WHISMAN, SUPERVISING ATTORNEY**

**SCOTT O’TOOLE, SENIOR DEPUTY PROSECUTOR**

**KING COUNTY COURTHOUSE**

**516 THIRD AVENUE**

**SEATTLE, WA 98104**

**(206) 296-0100**

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

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

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

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

12/09/10 84614-6 WSSC Motion to Stay the DOC's Collection of Costs Specifically Waived by Trial Court Order

12/15/10 84614-6 WSSC Order (The Court received the e-mail response of James M. Whisman regarding the Appellant's "Motion To Stay The DOC's Collection Of Costs Specifically Waived By The Trial Court Order.” Further review of the motion, as well as a review of the status as to the actual parties in this matter, raises the issue as to whether or not the motion is properly filed in Supreme Court cause number 84614-6. First, it appears that the DOC is not a party to this action, nor would the challenge to its administrative interpretation and/or application of the terms of the trial court order regarding its apparent collections appear to be within the scope of the pending appeal. Accordingly, in that regard, the parties in this matter are directed to serve and file written comments (which may be in letter form) addressing whether or not the motion should be considered by this Court in this matter. Said comments should include citations to any authority in support of the position taken in the comments.)

12/27/10 84614-6 WSSC Appellant’s comments (via letter)

01/07/11 84614-6 WSSC Respondent’s comments

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

04/29/11 84614-6 WSSC Order (Appellant’s “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 Second Supplemental Designation of Clerk's Papers

84614-6 WSSC

03/13/12 06-1-06563-4 Declaration of Gregory Wheeler

06/27/12 06-1-06563-4 Third Supplemental Designation of Clerk's Papers

84614-6 WSSC

01/22/13 06-1-06563-4 Fourth Supplemental Designation of Clerk's Papers

84614-6 WSSC

07/19/13 06-1-06563-4 Statement of Arrangements

84614-6 WSSC

07/22/13 06-1-06563-4 Fifth Supplemental Designation of Clerk's Papers

84614-6 WSSC

07/31/13 84614-6 WSSC Order (setting briefing schedule: opening brief due 10/14/13, answering brief due 2/14/14, reply brief due 3/31/14)

NAME: WOODS, Dwayne

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

Race: Black

DATE OF CRIME: April 27, 1996

PLACE OF CRIME: Spokane County

BRIEF FACTS: Dwayne Woods was convicted of two counts of aggravated first degree murder for the murders of Telisha Shaver (Count 1) and Jade Moore (Count 2). As to Count 1, the aggravating circumstances were: (1) the murder was committed to conceal the commission of a crime or to protect or conceal the identity of any person committing a crime; and (2) there was more than one victim and the murders were part of a common scheme or plan of the defendant. As to Count 2, the aggravating circumstances were: (1) [same as #1 above]; and (2) the murder was committed in the course of or in furtherance of the crime of first degree rape; and (3) [same as #2 for Count 1]. *State v. Woods*, Spokane County Superior Court Cause No. 96-1-01143-7.

DATE OF CONVICTION: June 20, 1997

SPECIAL SENTENCING: June 25, 1997

JUDGMENT AND: Spokane County Superior Court

SENTENCE Cause No. 96-1-01143-7

July 23, 1997

TRIAL JUDGE: Honorable Michael E. Donohue

DEFENSE ATTYS: Richard Fasey

James Sheehan

James Ames

Spokane, WA

PROSECUTING ATTYS: Steven Tucker, Prosecuting Attorney

James R. Sweetser, prior counsel and former Prosecuting Attorney

John F. Driscoll, Senior Deputy Prosecutor

Spokane County Prosecutor’s Office

Public Safety Building

West 1100 Mallon Avenue

Spokane, WA 99260

(509) 477-3662

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

Seattle, WA Oliver W. Loewy

Federal Public Defender - Id

Moscow, ID

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

Lenell Rae Nussbaum Judith M. Mandel

Seattle, WA Tacoma, WA

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

**suzanne Lee Elliott DAVID ZUCKERMAN**

**Attorney at Law Attorney at Law**

**1300 Hoge Building 1300 Hoge Building**

**705 SECOND AVENUE 705 SECOND AVENUE**

**SEATTLE, WA 98104 SEATTLE, WA 98104**

**(206) 623-0291 (206) 623-1595**

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

Steven Tucker, Prosecuting Attorney

Kevin Korsmo, Senior Deputy

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

**ROBERT W. FERGUSON, Attorney General**

**john j. samson, SENIOR COUNSEL**

**CORRECTIONS Division**

**P.O. Box 40116**

**Olympia, WA 98504-0116**

**(360) 586-1445**

DATE CAUSE ACTION

08/04/97 65585-5 WSSC Notice of Appeal

03/22/00 65585-5 WSSC Oral argument held

05/24/01 65585-5 WSSC Opinion affirming conviction and death sentence. Chief Justice Alexander authored the opinion for the Court. Justice Sanders dissented. *State v. Woods*, 143 Wn.2d 561, 23 P.3d 1046 (2001)

06/01/01 65585-5 WSSC Cost Bill ($50,975.71 to AIDF & $535.01 to Spokane County Prosecutor)

08/20/01 01-5921 USSC Petition for Writ of Certiorari

10/09/01 01-5921 USSC Petition for Writ of Certiorari denied. *Woods v. Washington*, 534 U.S. 964, 122 S.Ct. 374, 151 L. Ed. 2d 285 (2001)

10/15/01 65585-5 WSSC Mandate issued

11/27/01 96-1-01143-7 Death Warrant (setting execution for December 12, 2001)

11/27/01 71780-0 WSSC Application for Stay of Execution Pursuant to RAP 16.24

11/27/01 71780-0 WSSC Notation Order (the application for stay of execution is granted)

07/02/02 71780-0 WSSC Order (the matter is referred to the Spokane County Superior Court to hold a hearing and enter findings in answer to the following questions: (1) Is it Woods’ desire to pursue a post-conviction relief by means of a personal restraint petition? (2) If the answer is yes, is it Woods’ desire to proceed *pro se* in preparing and filing such a petition? (3) If Woods’ answer to question two is no, or is a conditional or qualified yes, are his present counsel willing to abide by Woods’ instructions regarding issues to be raised in such a petition?)

07/15/02 71780-0 WSSC Reference Hearing Report (with attached transcript of hearing)

08/12/02 71780-0 WSSC Additional Reference Hearing Report

06/16/05 71780-0 WSSC Opinion denying personal restraint petition. Chief Justice Alexander authored the opinion for the Court. Justice Sanders dissented. *In re Woods*, 154 Wn.2d 400, 114 P.3d 607 (2005)

09/30/05 71780-0 WSSC Order (denying motion for reconsideration)

10/03/05 71780-0 WSSC Certificate of Finality

10/14/05 C05-319 EDC Emergency Order Staying Execution of Dwayne Anthony Woods

07/21/06 C05-319 EDC Petition for Writ of Habeas Corpus

08/21/08 C05-319 EDC Order Denying Motion to Expand Record with Documents Re: Johnny Knight

02/05/09 C05-319 EDC Order Denying Petition, Supplement, and Revised Petition for a Writ of Habeas Corpus; Judgment in a Civil Case

02/10/09 C05-319 EDC Notice of Appeal

02/12/09 C05-319 EDC Order (granting stay of execution pending Court’s decision regarding certificate of appealability issue; if certificate of appealability is granted, the stay of execution will remain in effect during the pendency of the appeal and until the Court of Appeals issues its mandate)

04/10/09 C05-319 EDC Order Granting Motion for Certificate of Appealability in Part and Denying in Part

03/04/10 09-99003 9 CIR Oral argument held

08/10/11 09-99003 9CIR 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).

09/07/11 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 *Martinez v. Ryan,* 10-1001

12/23/11 11-7978 USSC Response to Petitioner's Motion to Defer Consideration of Petition for a Writ of Certiorari

12/28/11 09-99003 9 CIR Order (granting motion to continue stay of mandate)

01/04/12 96-1-01143-7 Notice of Appearance (Suzanne Elliott & David Zuckerman); Motion for Appointment of Counsel; Motion for DNA Testing

01/20/12 11-7978 USSC Respondent's Brief in Opposition

01/23/12 96-1-01143-7 Memorandum in Opposition (Vols 1 – 3)

01/31/12 11-7978 USSC Petitioner's Reply Brief

02/03/12 96-1-01143-7 Reply Re: DNA Testing

02/13/12 96-1-01143-7 Sur-Reply Memorandum in Opposition

02/15/12 96-1-01143-7 Supplemental and Clarifying Argument Re: DNA Testing

03/26/12 11-7978 USSC Order (granting petition for writ of certiorari, vacating the judgment, and remanding to the Ninth Circuit for further consideration in light of *Martinez v. Ryan*.) *Woods v. Holbrook*, 132 S. Ct. 1819 (2012).

05/17/12 09-99003 9 CIR Order (parties are ordered to file supplemental briefs addressing the effect of the Supreme Court’s ruling in *Martinez v. Ryan*.)

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

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

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

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

11/08/12 09-99003 9 CIR Citation to Supplemental Authority Pursuant to Fed.R.App.P. 28(j)

01/04/13 09-99003 9 CIR Order (Order to Show Cause is discharged and no sanctions are imposed.)

05/31/13 09-99003 9 CIR Citation to Supplemental Authority Pursuant to Fed. R. App. P. 28(j)

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

(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

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. *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*, 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

06/15/09 82101-1 WSSC Opening Brief in Support of Personal Restraint Petition

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

06/28/10 82101-1 WSSC State's Response to Personal Restraint Petition

07/13/10 82101-1 WSSC Order (Motion for Acceptance of Corrected Brief granted)

09/27/10 82101-1 WSSC Order (the Respondent's “Motion to have copy of Petition served upon Spokane County Prosecutor's Office to address claim that Petitioner received ineffective assistance of counsel to plead guilty in Spokane cases” is denied.)

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

01/25/11 82101-1 WSSC Petitioner’s Reply Brief

12/28/12 82101-1 WSSC Order (Hon. Tom Chambers is appointed as Justice Pro Tempore)

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

03/15/13 82101-1 WSSC Cost Bill

04/02/13 82101-1 WSSC Ruling on Cost Bill

04/03/13 82101-1 WSSC Petitioner's Motion to Reconsider

04/04/13 C13-0842 WDC Notice of Intent to File a First Habeas Petition in a Death Penalty Case

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

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

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

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

07/16/13 C13-0842 WDC Petitioner's Motion for Extension of Time to File Amended Petition and to Continue Stay of Execution

07/24/13 C13-0842 WDC Response in Opposition to Petitioner's Motion for Extension of Time to File Amended Petition

07/25/13 C13-0842 WDC Reply in Support of Petitioner's Motion for Extension of Time to File Amended Petition and to Continue Stay of Execution

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