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STATE OF WASHINGTON
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No. 90229-1

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

vs.

ROBERT LEE FREEMAN

Petitioner

APPEAL FROM DIVISION I
OF THE COURT OF APPEALS
#68633-0-1

PETITIONER'S REPLY BRIEF

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WSB #27813

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ORIGINAL

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TABLE OF AUTHORITIES

Cases

State v. Njonge, 176 Wn.2d 1031, 299 P.3d 19 *rev. granted* April 8, 20136

Statutes

RCW 10.73.0903, 4

RCW 10.73.1004, 5

Rules

CrR 7.8.....3, 4, 6

I. STATEMENT OF THE CASE

Robert Lee Freeman, petitioner, respectfully requests that this Court accept review of the Court of Appeals decision in case number 68633-0-I. He relies on the facts set forth in his previous briefing.

II. ARGUMENT

Respondent argues that Mr. Freeman's motion for a new trial was an untimely collateral attack. BOR at 2. In doing so, Respondent replies entirely on its calculation that the one-year time period for timely filing of such an attack "unquestionably" began on January 27, 2006. BOR at 3. Therefore, according to Respondent, Mr. Freeman's CrR 7.8 motion, filed almost six years later, cannot be considered timely.

As has been pointed out by Mr. Freeman, his collateral attack time began on June 13, 2011. This was cited in the briefing before the trial court, and further relied upon in his appellate materials and as an exhibit. Mr. Freeman's case was before the trial court under the exception to the one-year limitation articulated in RCW 10.73.090. Specifically, relevant to the instant case is RCW 10.73.090(3)(c), which reads as follows:

(3) For the purposes of this section, a judgment becomes final on the last of the following dates:

...

(c) The date that the United States Supreme Court denies a timely petition for certiorari to review a decision affirming the conviction on direct appeal.

The filing of a motion to reconsider denial of certiorari does not prevent a judgment from becoming final.

RCW 10.73.090(3)(c).

Mr. Freeman clearly articulated the authority for bringing his motion to the trial court for relief from judgment was empowered by CrR 7.8(b)(5). His motion, therefore, had to be "made within a reasonable time" and subject to time restrictions of RCW 10.73.090, .100, .130, and .140. The record establishes Mr. Freeman's case was on constant review up through the time when the Supreme Court of the United States of America denied certiorari on June 13, 2011. See clerk's notice regarding writ of certiorari, CP 135, and briefing referring this date to the trial court at CP137-138. Mr. Freeman's motion to the trial court was filed during January of 2012. See CP 13. It was argued on February 15, 2012, and the resulting Findings and Conclusions were signed on April 6, 2012. Everything relevant to Mr. Freeman's Motion for Relief from Judgment occurred well within the confines of the exception to the one-year time limitation established by statute. Clearly, Mr. Freeman would have been abusing the writ process had he attempted to pursue his motion for a new trial while his petition was pending before the United States Supreme Court on the same issue.

Mr. Freeman's case has never rested because he has met all filing deadlines for the state and federal appellate courts through which his case has navigated. If, nevertheless, the court insists on observing the January 27, 2006 as the relevant date, the case is reviewable under RCW 10.73.100 because Mr. Freeman's motion

for relief from judgment is based on the newly published law. RCW 10.73.100 reads in relevant part as follows:

Collateral attack -- When one year limit not applicable

The time limit specified in RCW 10.73.090 does not apply to a petition or motion that is based solely on one or more of the following grounds:

...

(6) There has been a significant change in the law, whether substantive or procedural, which is material to the conviction, sentence, or other order entered in a criminal or civil proceeding instituted by the state or local government, and either the legislature has expressly provided that the change in the law is to be applied retroactively, or a court, in interpreting a change in the law that lacks express legislative intent regarding retroactive application, determines that sufficient reasons exist to require retroactive application of the changed legal standard.

RCW 10.73.100.

No Washington appellate court has actually addressed the two instances of courtroom closure that occurred during Mr. Freeman's trial and respondent has conceded that there has been an unprecedented change in that body of law in recent years. Mr. Freeman's opening brief to the Court of Appeals outlined how the motion for new trial was based primarily on the Appellate Court's decision in State v. Njonge, 161 Wn.App. 568, 255 P.3d 753 (2011) – but that that case was decided by the Court of Appeals while his habeas petition was pending before the U.S. Supreme Court. See Appellant's Opening Brief to Court of Appeals, 12-21. Njonge dealt

specifically with removal of the public from the jury selection process – constituting a significant change in the law and review of that case is now pending before this Court. See State v. Njonge, 176 Wn.2d 1031, 299 P.3d 19 *rev. granted* April 8, 2013. Mr. Freeman's previous state appellate review dealt only with the removal of Aria Rosetti during witness testimony. See CP 107-108. Where Mr. Freeman's CrR 7.8 motion was based on a significant change in the law, in addition to the other arguments made above, it was timely and review is appropriate.

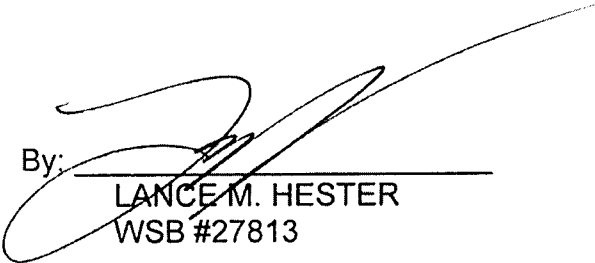
III. CONCLUSION

Based on the above cited files and authorities, Mr. Freeman respectfully requests that this Court accept review.

Respectfully submitted this 5th day of June, 2014.

HESTER LAW GROUP, INC., P.S.
Attorneys for Petitioner

By: _____


LANCE M. HESTER
WSB #27813

CERTIFICATE OF SERVICE

Lee Ann Mathews, hereby certifies under penalty of perjury under the laws of the State of Washington, that on the day set out below, I delivered true and correct copies of the reply brief to petition for review to which this certificate is attached, by United States Mail or ABC-Legal Messengers, Inc., to the following:

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Signed at Tacoma, Washington this 5th day of June, 2014.


LEE ANN MATHEWS

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Greetings, attached please find for filing the following:

Petitioner's Reply Brief

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