COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

COA Copy

STATE OF WASHINGTON Respondent, v. JAMES PHILIP DOUGLAS (your name) Appellant.	))))))))))	No. 39429-4-II (PREVIOUSLY) - 34451-3-II STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

I, JAMES PHILIP DOUGLAS, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

The violation of counsel of RPC 8.4(c)(d)(e)(h)(i) by mistatement of facts pertaining to Appellants Case. Appellants Opening Brief (pg 1); The convictions for the assaults and bail jumping were not remanded for resentencing but were based on Appellants CrR 7.8 brief being granted by Judge Ronald E. Culpepper on Dec. 16th 2008 per motion to dismiss (attached). The appellant noted prosecutorial misconduct and the court should have dismissed cause instead of re-sentencing on March 27th 2009. The current counsels failure to retrieve transcript of Jan. 12th 2009 hrg brings ineffective counsel, as it was filed under the joined cause number, which was court ordered.

Additional Ground 2

The original sentence was (22 months) and was served before resentencing, the next sentence of (12 months) was also served in its entirety. To date the Appellant has served (65 months) on his original (61 month) sentence which is unlawful incarceration and since current counsel has also been ineffective in declaring the unconstitutional actions of the lower court, there is no available remedy other than dissmissal as set forth in CrR 8.4, CrR 3.2(h), CrR 7.8; also (State v. McDonald, 143 Wn.2d 506, 22 P.3d 791 (2001); also (Tower v. Glover, 467 U.S. 914, 104 S.Ct 2820, 81 L.Ed 2d 758 (1984); also WSBA Standard 4-8.4(b), 4-8.6(a-d); also violating U.S. and State Constitutions, Due Process Clauses.

If there are additional grounds, a brief summary is attached to this statement, (AS MOTION TO DISMISS CAUSE)

Date: March 22nd, 2010

Signature: [signature]

Form 23

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COURT OF APPEALS
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STATE OF WASHINGTON
BY DEPUTY

COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON RESPONDENT, V. JAMES PHILIP DOUGLAS APPELLANT	NO. 39429-4-II (SUPERIOR COURT, 04-1-03902-1) MOTION TO DISMISS CAUSE

THE APPELLANT, JAMES PHILIP DOUGLAS, RESIDING AT PIERCE COUNTY CORRECTIONS, 910 TACOMA AVE SO., TACOMA WA 98402 AS BKG #2008318039 IN 4WC21.

RELIEF SOUGHT

THE APPELLANT, AFTER CAREFUL REVIEW OF THE DEFENSE COUNSELS' OPENING BRIEF, DOES NOTE THE MANIFEST ERROR OF THE COUNSELS' STATEMENTS OF FACT. THIS ACTION HAVING PREJUDICED THE DEFENSES APPEAL AND FORCES THE APPELLANT TO ASK FOR DISMISSAL BASED ON INEFFECTIVE ASSISTANCE OF COUNSEL. THE APPELLANT ASKS THE COURTS ISSUANCE OF A DISMISSAL W/ PREJUDICE, OR AT THE LEAST AN EVIDENTIARY HEARING TO DISCLOSE ADDITIONAL EVIDENCE AND GROUNDS SUBSTANTIATING THE PREJUDICE OF: THE U.S. CONSTITUTIONS (5TH, 6TH, 14TH) AND (EIGHTH) AMENDMENT RIGHTS OF; (1) LACK OF DUE PROCESS AND EFFECTIVE ASSISTANCE OF COUNSEL; (2) LACK OF ACKNOWLEDGEMENT OF APPELLANTS COMPLETION OF THE CUSTODY PORTION OF SENTENCING; (3) A LACK OF DUE DILIGENCE IN ADJUDICATING THIS 2004 CASE IN A TIMELY AND EFFICIENT MANNER; (4) A LACK OF DISCLOSURE OF EVIDENCE.

'AFFIDAVIT OF JAMES PHILIP DOUGLAS - APPELLANT'

AS ORIGINALLY OVERTURNED ON INEFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL IN 2005 PER MANDATE OF COURT OF APPEALS 34451-3-II, FILED ON SEPT. 3RD, 2008 (EXHIBIT 'A'). THE SUPERIOR COURTS ORDER DATED DEC. 16TH, 2008 SHOWS THE CAUSES ORIGINALLY JOINED FOR TRIAL, SEVERED, (EXHIBIT 'B') AND TRIAL SET FOR JOINED CAUSE 04-1-05086-5 IN WHICH TIME FOR SPEEDY TRIAL ON JANUARY 12TH, 2009 (NOT HELD AS OF YET) IS VIOLATED. THE APPELLANTS RETURN TO SUPERIOR COURT REVEALED NEW EVIDENCE, UNDISCLOSED BY PROSECUTION, IN POLICE WITNESS STATEMENTS OF THE ALLEGED VICTIMS ATTEMPT TO WITHHOLD APPELLANTS' CHILD FROM HIS COURT ORDERED VISITATION WHILE PROVOKING AN ILLICIT INCIDENT TO SWAY GUARDIAN AD LITUM'S CUSTODY DECISION (EXHIBIT 'C'). THESE STATEMENTS ALONE WOULD HAVE IMPEACHED THEIR OWN STATEMENTS IN COURT IF THEY HAD BEEN DISCLOSED TO APPELLATES' ATTORNEY, WHO HAD ATTEMPTED TO IMPEACH ON THESE SAME STATEMENTS, IN PRIOR TAPE RECORDINGS, BUT FAILED TO BE EFFECTIVE AS COUNSEL, (ALSO SHOWN IN APPELLATE COURT'S UNPUBLISHED OPINION, DATED SEPTEMBER 3RD, 2008, PAGE 15, CROSS EXAMINATION OF CARROLL PEDERSON). THE FACTS OF LACK OF DISCLOSURE OF EVIDENCE ALONE SHOWS PREJUDICE REQUIRING DISMISSAL, AND THE DEFENDANTS MOTION TO DISMISS, SCHEDULED TO BE HEARD AT THE MARCH 27TH 2009 SENTENCING, SHOWED THESE FACTS, EVEN THOUGH IT WAS NOT HEARD, BUT DISMISSED ANYWAY, (PER EXHIBIT 'D', LINE 3, 4). THE APPELLANT ALSO NOTES TWO WITNESSES WHO TESTIFIED BRIEFLY AT THE SENTENCING, MAIRI UASWIG AND DR. BETTY RICHARDSON, BUT THE COURTS REFUSED TO SUBPEONA (OFFICER BACCUS S-21), WHO WOULD HAVE TESTIFIED TO APPELLANTS EX WIFE AND IN LAWS, PRIOR ABUSE OF CUSTODY AND USE OF APPELLANTS CHILD TO COERCE AN ALTERCATION FOR PURPOSES OF CUSTODY, (SEE EXHIBIT 'E', SUBPEONA REQUEST AND LETTER FILED).

THE COURTS OPINION, PAGE 16, SHOWS THIS TESTIMONY WOULD HAVE ALSO BEEN CRUCIAL TO ASSIST IN THE DEFENSE'S THEORY. THE APPELLATE COURT ALSO NOTED, PAGE 17, "THAT POST-TRIAL COUNSEL WAS NOT ENTITLED TO UNILATERALLY WITHDRAW..., BUT WAS REQUIRED TO PROVIDE REASONABLE REPRESENTATION", AT THE MOTIONS HEARING AND SENTENCING. THIS ALSO SHOWS INEFFECTIVE COUNSEL. THE APPELLANT ALSO FINDS NON-DISCLOSURE OF COURT RECORDS DATED OCTOBER 12TH, 2004 IN MOTION FOR BENCH WARRANT IN WHICH IS STATED "DEF. FTA'd for OH w/ NOTICE". THE DEFENSE FAILED TO SUPPLY THIS EVIDENCE AT TRIAL AS "NO-DEFENSE FOR THE BAIL JUMPING CHARGE WAS PRESENTED," (COURTS OPINION - PAGE 13) WPIC 19.17 - APPELLANT GAVE NOTICE TO THE COURT VIA HIS PRIOR ATTORNEY WHO APPEARED IN COURT OCTOBER 12TH, 2004, ON HIS BEHALF, (EXHIBIT 'F'). FOLLOWING SUIT, THE APPELLANT IS NOW IN RECEIPT OF PHONE RECORDS FROM THE PROSECUTION WHICH WERE ALSO WITHHELD PRIOR, SHOWING MR. DOUGLAS IN YAKIMA DURING THE TIME OF THE ALLEGED ARSON WHICH ALSO WERE NOT AVAILABLE FOR TRIAL PRIOR, (EXHIBIT 'G').

THE SENTENCING ITSELF WAS ERRONIOUS; IN STATE V. HARDESTY, 78 Wash. App. 593, 897, P.2d 1282 (1995) THE COURT OF APPEALS HELD THAT RESENTENCING DEFENDANT AFTER HE HAD FINISHED HIS SENTENCE VIOLATED THE DOUBLE JEOPARDY CLAUSE. ONCE A DEFENDANT HAS COMPLETED SERVING HIS SENTENCE, REASONABLE EXPECTATION OF FINALITY ARISES AND JEOPARDY ATTACHES. RE-SENTENCING WAS NOT VALID FOR NUMEROUS REASONS (ONE) CrR 7.8(b)(5), PERMITS A PARTY TO BE RELIEVED OF A FINAL JUDGEMENT IN A CRIMINAL CASE UPON SHOWING OF MISCONDUCT OR MISREPRESENTATION.

IN (STATE V. HALL, 32 WA. APP. 108, 645 P.2d 1143 (1982)), THE STATE WAS ABLE TO VACATE THE SENTENCE AND RESENTENCE BECAUSE THE OFFENDER HAD NOT COMPLETED THE TIME GIVEN AT SENTENCING PRIOR. IN THIS CAUSE, ALL TIME HAS BEEN SERVED ON BOTH CAUSES, THEREFORE THIS CAUSE SHOULD BE DISMISSED W/ PREJUDICE, ALSO SHOWN IN (UNITED STATES V. ARRELLANO-RIOS, 799 F.2d 520, 524-25 9TH CIR 1986); (TWO) THE COURT OF APPEALS HAS STANDARDS FOR REVIEW IN THE CASE OF A QUESTIONABLE RE-SENTENCING INCLUDING SUBMISSION TO THE COURT OF APPEALS FOR REVIEW UNDER CrR 7.8(c)(2)(i), WHICH WAS NOT DONE HERE. THE SENTENCE WAS VACATED ON DEC. 16TH, 2008 (EXHIBIT "B") BY JUDGE RONALD CULPEPPER IN CAPT PER APPELLANTS CrR 7.8 MOTION FILED AND GRANTED.

CONCLUSIONS

THERE IS ONLY ONE REMEDY TO SOLVE THIS MANIFEST INJUSTICE AND THAT IS DISMISSAL OF CHARGES W/ PREJUDICE. I HAVE INCLUDED, (EXHIBIT "H") - - THE SUPREME COURTS DECISION STATING APPELLANTS' MAX RELEASE DATE AS NOV. 28TH, 2009. THE COURT ULTIMATELY DENIED REVIEW BUT HAS CONFIRMED I SHOULD NOT STILL BE INCARCERATED IN JAIL AS OF NOV. 28TH, 2009. THE COURTS MANDATE OF "REVERSAL AND REMAND" FOR RETRIAL STATES, "THE LOWER COURT SHALL PLACE THIS MATTER ON THE NEXT AVAILABLE DOCKET TO BE HEARD", DATED SEPT 6TH 2008. THE FIFTH AND FOURTEENTH AMENDMENT, "NO PERSON SHALL BE ARBITRARILY DEPRIVED OF HIS LIFE, LIBERTY OR PROPERTY. LIBERTY BEING A "SUBSTANTIVE RIGHT" AND DENOTES A MATTER OF CLEAR AND WEIGHTY IMPORTANCE. AS SUCH, UNDER WA. CONST ART I § 3 AND 22 SO LONG AS A DEFENDANTS "SUBSTANTIVE RIGHTS", WERE NOT PREJUDICED, INCLUDING DUE PROCESS RIGHTS . . . , THE STATE COULD ALLEGE ACTUATING FACTORS... AS SHOWN IN

(STATE v. BERRIER, 143, Wn. App 398, 174 P.3d 697 (2008)).
THE STATE HAS ABUSED THE COURTS' LAWS LONG ENOUGH AND CERTAINLY MR DOUGLAS'S SERVING SIXTY-FIVE MONTHS ON A SIXTY-ONE MONTH SENTENCE WITHOUT RELEASE, CONSTITUTES VIOLATION OF A "SUBSTANTIVE RIGHT", AS WELL THE NUMEROUS EVIDENCE WITHHELD BY THE STATE. THE STATE HAS NOT SHOWN ANY REASON TO DENY RELEASE AS ASKED FOR IN, (EXHIBIT 'H', PAGE 2) ASKING FOR COMMUNITY CUSTODY OR COMMUNITY SAFETY ISSUES WHICH HAVE NO BASIS. NIETHER THE COMMUNITY NOR MR. DOUGLAS BENEFIT FROM ANYTHING OTHER THAN DISMISSAL W/ PREJUDICE. I RESPECT FULLY ASK THE APPELLATE COURT RULE IN APPELLANTS FAVOR OF DISMISSAL S'D MR. DOUGLAS CAN GET ON WITH HIS LIFE AND WE CAN PUT THIS CASE TO REST.

END

THE APPELLANT, JAMES PHILIP DOUGLAS, AVERS UNDER PENALTY OF PERJURY AND LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING FACTS ARE CORRECT TO THE BEST OF MY KNOWLEDGE AS STATED.

DONE THIS DAY, THE 20TH OF March IN 2010.

SIGNED,

X

JAMES PHILIP DOUGLAS - APPELLANT

(notice of service) ~

A copy of this motion and statement of additional grounds were mailed to Pierce County's Prosecution Office, 930 Tacoma Ave So., Tacoma WA 98402 on 3/22/10

X

JAMES P. DOUGLAS - APPELLANT

'EXHIBIT LIST 39429-4-II'

A) APPEALS' COURT UNPUBLISHED OPINION, DATED: SEPT 3RD, 2008 (1 PGS)

B) SUPERIOR COURT ORDER, DATED: DEC 16TH, 2008 (3 PGS)

C) CARROL AND PAULINE PEDERSON STATEMENT, DATED: JULY 26TH, 2004 (2 PGS)

D) MEMO JOURNAL ENTRY, DATED: MARCH 27TH, 2009 (2 PGS)

E) REQUEST FOR SUBPEONA UNANSWERED, DATES: MARCH 18TH, 2009 (6 PGS)

F) BENCH WARRANT, DEF FTA'd W/NOTICE, DATED: OCT 12TH, 2004 (1 PGS)

G) APPELLANTS PHONE RECORDS, DATED: OCT 10TH, 2004 OCT 20TH, 2004 (1 PGS)

H) SUPREME COURTS RULING, DATED: AUG 19TH, 2009 (2 PGS)

19595 10/21/2008 00067

A)

FILED
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY _____
DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. JAMES PHILIP DOUGLAS, Appellant.	No. 34451-3-II No. 34461-1-II consolidated UNPUBLISHED OPINION

HOUGHTON, P.J. -- James Douglas appeals his convictions of second degree assault, fourth degree assault, bail jumping, first degree arson, residential burglary, and violation of a domestic violence court order, arguing ineffective assistance of counsel and trial court error. He raises similar and additional arguments in his statement of additional grounds.[1] We reverse and remand his first degree arson, residential burglary, and violation of a domestic violence court order convictions. We affirm his remaining convictions of second degree assault, fourth degree assault, and bail jumping.

[1] RAP 10.10.

B)

IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON, Plaintiff , vs. DOUGLAS, JAMES PHILIP, Defendant .	Cause No: 04-1-05086-5 **ORDER** **(OR)**

This matter having come before the Court on the Defendant's Motions to dismiss, for severance and relief of judgment, for discovery and for appointment of a defense investigator to assist the defendant. The Court makes the following rulings regarding these motions and trial date.

① The Defendant's speedy trial timeframe commenced on November 14, 2008, the date of the

DATED this 18 day of October, 20 08.

JUDGE ~~BRYAN CHUSHCOFF~~

Attorney for Plaintiff/Petitioner
WSBA# 12184

~~Attorney for~~ Defendant/~~Respondent~~
~~WSBA#~~

IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON, Plaintiff , vs. DOUGLAS, JAMES PHILIP, Defendant .	Cause No: 04-1-05086-5 **ORDER** **(OR)**

Defendant's first appearance following remand before this court. Based on that date, the trial currently set for 12/18/2008 is set over to January 12, 2009.

(2) The defendant's motion for assignment of an investigator is hereby granted. ~~The~~ DAC shall provide the name of the investigator and contact information to the defendant by 12/18/2008.

(3) The Assault and arson cases are hereby severed.

DATED this 16 day of October, 2008.

JUDGE ~~BRYAN CHUSHCOFF~~

Attorney for Plaintiff/Petitioner
WSBA#

~~Attorney for~~ Defendant/~~Respondent~~
~~WSBA#~~

Order
Page 2 of 3

IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON, Plaintiff , vs. DOUGLAS, JAMES PHILIP, Defendant .	Cause No: 04-1-05086-5 **ORDER** **(OR)**

Cause # 04-1-03902-1 (Assault) shall be subject to vacation of the Judgment & Sentence. Resentencing on this cause # shall take place on 1/12/2009.
(4) The remaining motions filed by the defendant shall be heard on the day of trial (1/12/2009)
(5) Defendant shall have until 12/31/2008 to complete briefing; The State shall file responsive briefs by 1/9/2009.

DATED this 16th day of Dec, 20 08.

JUDGE ~~BRYAN CHUSHCOFF~~ Ronald Culpepper

Attorney for Plaintiff/Petitioner
WSBA#

Attorney for Defendant/Respondent
WSBA#

Order
3 of 3

POLICE DEPARTMENT BONNEY Lake

BONNEY LAKE POLICE DEPARTMENT

WITNESS STATEMENT FORM

c)

I the undersigned, declare this to be a true and correct statement made of my own free will and accord. No promises have been made to me, nor any duress used against me. I will testify, in court, under oath, to the facts herein. I understand that I may be charged with violation of R.C.W. 9A.76.020 "Obstructing a Public Servant" if making a false statement.

Incident No. 04-1744

NAME: Last	First	Middle (Maiden)	Date of Birth
Pederson	Pauline Pearl	Shinn	[redacted]
ADDRESS: Street Mailing	City	State / Zip	Home Phone
P.O. Box [redacted]	Bonney Lake	WA 98390	[redacted]
Place of Employment			Business Phone
retired			

STATEMENT 7-25-04 James called 12:30. our son-in-law wanted to talk to Debra (Our daughter). James informed Debra that he had 2 more boxes of her belongings and we could get them when we dropped off Alyssa at the Bonney Lake Police Station parking lot. Visitation was from 2:00pm to 8:00pm. We had been advisted to meet at the police station because of past threats and confrontations with James. There has also been a problem with Debra getting her belongings from James house and the condition of things broken and missing. We took a camera with us to take picture of what was in the boxes. We said we would not let James take Alyssa until the pictures were taken of the contents of the boxes.

James started getting angry and began verbally abusing me using profanity. Carroll moved one box ⇒

DATE 7-26-04 TIME afternoon SIGNATURE Pauline P. Pederson

WITNESS _____ WITNESS _____

BONNEY LAKE POLICE DEPARTMENT

WITNESS STATEMENT FORM

Incident No. CH-148

I the undersigned, declare this to be a true and correct statement made of my own free will and accord. No promises have been made to me, nor any duress used against me. I will testify, in court, under oath, to the facts herein. I understand that I may be charged with violation of R.C.W. 9A.76.020 "Obstructing a Public Servant" if making a false statement.

NAME: Last: Pederson	First: Carroll	Middle (Maiden): L	Date of Birth: [redacted]
ADDRESS: Street	City	State	Zip: 482
Place of Employment: retired			Business Phone

STATEMENT On July 25, 2004 at approximately 1:55pm my wife and I brought our daughter's 10 month old baby to the Bonney Lake Police Station parking lot so the father James Douglas could have pre-arranged visitation with his daughter. James had also called earlier and said he was bringing 2 boxes of our daughter's belongings that had been over looked when our daughter Debra separated from James. On arriving at the Police station we told James we would not give Alyssa (10 month old baby) to him until we saw the contents of the boxes. [redacted] and I went to examine the contents of the first box.

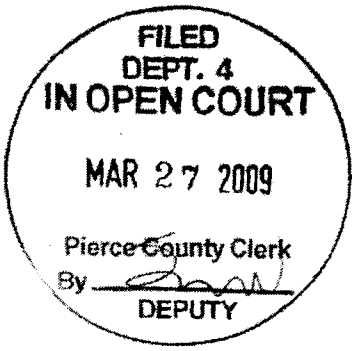
DATE 7-28-04 TIME Wed F-afternoon SIGNATURE Carroll L Pederson

WITNESS _____ WITNESS _____

1886 3/30/2009 438218

D)

04 1-03902-1 31768719 CME 03-30-09



IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

STATE OF WASHINGTON

vs.

DOUGLAS, JAMES PHILIP

Cause Number: 04-1-03902-1

MEMORANDUM OF JOURNAL ENTRY

Judge: BRYAN CHUSHCOFF
Court Reporter: KATRINA SMITH
Judicial Assistant/Clerk: SUSAN WINNIE

GREGORY L GREER — Prosecutor

Proceeding Set: SENTENCING DATE
Proceeding Date: 03/27/09 13:30
Proceeding Outcome: HELD
Resolution: Convict JV After Trial

Clerk's Code:
Proceeding Outcome code: **SNTHRG**
Resolution Outcome code: **CVJV**
Amended Resolution code:

Report run date/time: 03/27/09 5:10 PM
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IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

STATE OF WASHINGTON

vs.

DOUGLAS, JAMES PHILIP

Cause Number: 04-1-03902-1
MEMORANDUM OF JOURNAL ENTRY

Judge:
BRYAN CHUSHCOFF

MINUTES OF PROCEEDING

Judicial Assistant/Clerk: SUSAN WINNIE
Court Reporter:KATRINA SMITH
Start Date/Time: 03/27/09 4:07 PM

March 27, 2009 04:06 PM This matter before the Court for sentencing. Present: Bertha Fitzer, atty. for the State and James Douglas, Pro Se Defendant. Also appearing is Melanie Macdonald, Stand in attorney for Mr. Douglas. Court/counsel: colloquy. Motion for dismissal denied by the Court. Court proceeds with sentencing. Defense requests witnesses to testify. Defense witness: **Mari Vostwig**, sworn by the Court, testifies under direct examination. Dexhibit #1 and #2 marked. 04:16 PM No cross-examination. Witness excused. Defense witness: **Dr. Betty Richardson**, sworn by the Court, testifies under direct examination. 04:32 PM No cross-examination. 04:33 PM **Dexhibit #3 marked, admitted and sealed**. 04:33 PM State's recommendations. 04:34 PM Pauline Pederson addresses the Court. 04:40 PM Statement by defendant, James Douglas. 04:43 PM Court imposes sentence. 04:50 PM Sentencing paperwork given to pro se defendant to review. 05:04 PM Court signs documents. Discussion re: paperwork. 05:09 PM Judicial Assistant separates paperwork.

End Date/Time: 03/27/09 5:09 PM

2319 3/19/2009 68825

FILED
IN COUNTY CLERK'S OFFICE

A.M. MAR 18 2009 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

04-1-05086-5 31697915 NTIS 03-18-09

IN THE SUPERIOR COURT IN THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON Plaintiff, v. JAMES PHILIP DOUGLAS Defendant.	No. 04-1-05086-5 NOTE FOR MOTION DOCKET

TO: THE CLERK OF THE SUPERIOR COURT

THE PROSECUTING ATTORNEY OF Pierce COUNTY

COMES NOW, the defendant, and asks the Honorable Court to take notice that he will bring on for hearing a Motion for Subpoena Duces Tecum. The hearing is requested to be held during the regular motion calendar on March 20TH OF 2009 DOCKET IN FRONT OF JUDGE BRYAN CHUSHCOFF RM 2B

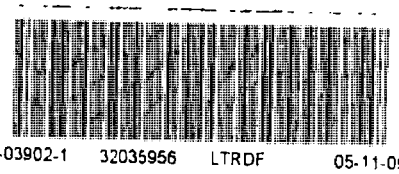
The defendant is currently incarcerated and therefore ~~waives his rights~~ ASKS to be present at the hearing for this matter.

The nature of the case is to have his MOTION FOR SUBPOENA of Sumner Police Office granted, and order.

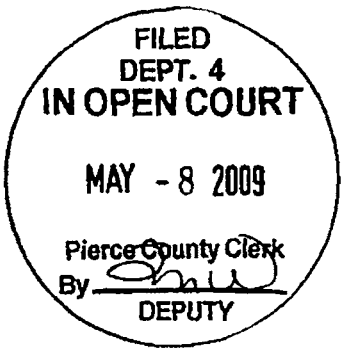
Date: March 13TH 2009 By: _____, pro se

JAMES PHILIP DOUGLAS
print name

NOTE FOR MOTION DOCKET
1 of 1



04-1-03902-1 32035956 LTRDF 05-11-09



IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON, Plaintiff , vs. DOUGLAS, JAMES PHILIP, Defendant .	Cause No. 04-1-03902-1

3-1-09

Hon. Judge Bryan Chushcoff
930 Tacoma Ave So. Rm, 2B
Tacoma, WA 98402

In RE: 04-1-03902-1 Resentencing/mitigation March 27TH, 2009 1:30pm

Dear Sir,
I respectfully ask that you sign the subpoena duces tecum and mail to the address provided. I do not have counsel for this matter and will be acting Pro-SE as an indigent defendant. Under Rev. Code Wash. (ARCW) § 9.94A.535(2008) Departures from the guidelines (1) Mitigating Circumstances, the Court should consider circumstances (a), (c), (d) and (e) and subsequent testimony of witnesses. The court has recieved the MOTION for such under 04-1-05086-5 and two expert witnesses have allready been subpoena'd for the hearing as Phsychological testimony to defendants lack of predisposition in the case. In lieu of such, as warranted, the defendant as counsel has also filed a motion to dismiss in which the defendant has outlined the actions of prior counsel and prosecutors misconduct. The defense would ask that the court would so move to dismiss instead, in the interests of JUSTICE under CrR 8.3(b), so that the defendant can get on with his life. In reality, the case

would more than likely come back on appeal and since the defendant has allready gone beyond the maximum sentence imposed it would serve no purpose to not dismiss. The motion filed speaks for itself in fact supporting such.

Respectfully Submitted,

X

James Philip Douglas #200831803
Pierce County Corrections
910 Tacoma Ave So
Tacoma, WA 98402
defendant/counsel

IN THE SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	NO. 04-1-03902-1
	)	
	)	SUBPOENA DUCES TECUM
JAMES PHILIP DOUGLAS,	)	
	)	
Defendant.	)	
	)	

TO: Sumner Police Dept. Officer (JOHN DOE-SOI)
1104 Maple St, Suite 140
Sumner, WA 98390
PH (253) 863-6384

GREETINGS IN THE NAME OF THE STATE OF WASHINGTON, you are hereby required to appear with certain documents on March 27th, 2009, at ~~9:00 a.m.~~ 1:30 PM at Pierce County Superior Court, Room ~~250~~ 28 of the County City Building located at 930 Tacoma Avenue South, Tacoma, WA to give evidence in this cause on the part of the defendant; and

FURTHER, you are commanded to bring with you the following documents and materials:
Report from 7-3-04 Civil Standby at: 5103 Parker Rd E, Sumner, WA 98390 and unredacted copies of CAD EVENTS: 0404040069 on 4-4-04 and 0407250047 on 7-25-04.

DATED: _____.

_____
JUDGE

Name James Douglas
Bkg. # 200831 8039
Pierce County Sheriff's Department
910 Tacoma Avenue South
Tacoma, WA 98402-2168

TACOMA - OLYMPIA
WA 983
02 MAR 2009 PM 1 L

USA 42

Pierce County Superior Court - Rm 2B
c/o Susan Winnie
930 Tacoma Ave So
Tacoma, WA 98402

98402+2103

THIS ENVELOPE IS RECYCLABLE AND MADE WITH 30% POST CONSUMER CONTENT.

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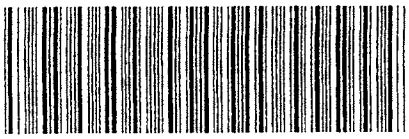
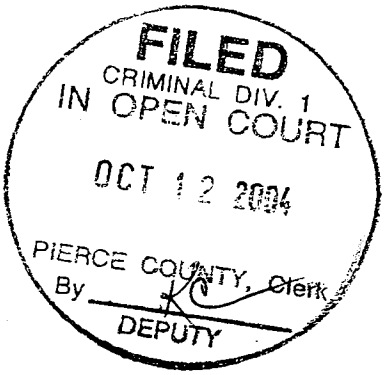
F)



04-1-03902-1 21922059 MTFBW 10-12-04



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON Plaintiff, vs. James P. Douglas, Defendant.	NO. 04-1-03902-1 MOTION AND DECLARATION AUTHORIZING ISSUANCE OF BENCH WARRANT

I. MOTION

The undersigned (deputy) prosecuting attorney, moves the court for the issuance of an order authorizing the clerk of this court to issue a bench warrant for the arrest of the defendant above named for the reason that the defendant has

Def. FTA'd for OH w/notice.

This motion is based upon the case record to date and upon the following declaration.

DATED: 10-12-04

(Green) 22936
DEPUTY PROSECUTING ATTORNEY

II. DECLARATION

The undersigned states:

2.1 I am a (deputy) prosecuting attorney and am acquainted with the court file of this case.

2.2 A bench warrant should issue for the following reasons:

[X] On 10-12-04 the court ordered the defendant to appear on today's date and defendant has failed to appear as ordered; or

[ ] _____

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED: 10-12-04 (0955 hrs)
PLACE: TACOMA, WASHINGTON

(Green) 22936
DECLARANT

Qwest
Spirit of Service

44	OCT 19	6:51P	WALLAWALLAWA	50
45	OCT 19	8:58P	MAPLE VLY WA	425
46	OCT 20	3:35P	MAPLE VLY WA	425
47	OCT 20	4:10P	UNKNOWN	800 23
48	OCT 20	4:33P	SEATTLE WA	206 9
49	OCT 20	4:34P	MAPLE VLY WA	425
50	OCT 20	4:47P	SEATTLE WA	206 9
51	OCT 20	4:48P	SEATTLE WA	206 9
52	OCT 20	4:50P	SEATTLE WA	206 9
53	OCT 20	6:08P	MAPLE VLY WA	425
1	OCT 20	6:09P	SEATTLE WA	206 94
2	OCT 20	6:10P	MAPLE VLY WA	425 4
3	OCT 20	6:12P	AUBURN WA	253 93
4	OCT 20	6:21P	AUBURN WA	253 73
5	OCT 20	7:22P	MAPLE VLY WA	425 4
6	OCT 20	7:28P	SILVERLAKEWA	425 3

AUTOMATIC ROAMING CHARGES
APPLY TO AUTOMATIC ROAMING CALLS NOT INCLUDED IN YOUR PLAN. "ROAMING ON NETWORK" CHARGES APPLY TO ON-NETWORK CALLS OUTSIDE HOME COVERAGE AREA. "ROAMING OFF NETWORK" CHARGES APPLY TO OFF-NETWORK CALLS IN OR OUTSIDE HOME COVERAGE AREA. SEE PLAN AGREEMENT FOR DETAILS.

ROAMING OFF NETWORK

DATE	TIME	TO/FR	PLACE	AREA NUMBER
7 OCT 10	12:48P		YAKIMA WA	INCOMING
8 OCT 12	1:46P		PENDLETON OR	206
9 OCT 16	11:16A		PENDLETON OR	206
10 OCT 16	11:21A		PENDLETON OR	42

SERVICE DISCONNECTED 11-02-2004

H)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

2009 AUG 19 P 2:30

In re the Personal Restraint of JAMES P. DOUGLAS, Petitioner.	NO. 83200-5 RULING

James Douglas is serving a sentence imposed on convictions of second degree assault, fourth degree assault, and bail jumping. Claiming that the Department of Corrections was unlawfully confining him past his early release date, Mr. Douglas filed a personal restraint petition in Division Two of the Court of Appeals. The acting chief judge dismissed the petition. Mr. Douglas now seeks this court's review. RAP 16.14(c); RAP 13.5A(a)(1).

Mr. Douglas's early release date was March 19, 2008, and his maximum release date is November 28, 2009. The department has discretion to consider an offender's eligibility for community custody in lieu of early release. RCW 9.94A.728(a); *In re Pers. Restraint of Crowder*, 97 Wn. App. 598, 600, 985 P.2d 944 (1999). To become eligible for community custody, Mr. Douglas is required to obtain department approval of his release plan, including his proposed residence and living arrangement. RCW 9.94A.728(c). Consistent with the statutory mandate, Mr. Douglas's judgment and sentence required him to obtain department approval of his residential address in order to be eligible for community custody.

Mr. Douglas proposed his parents' residence. The department first approved but then withdrew approval after it was discovered a victim lived nearby.

565/70

See RCW 9.94A.728(d) (department may withhold approval on basis of risk to victim). Disapproval on that basis was appropriate. *See Crowder*, 97 Wn. App. at 601 (withdrawal of approval appropriate when residence sponsor charged with assault and evicted from apartment).

Mr. Douglas subsequently proposed a group home in another county. That location raised no victim safety concerns, but the department disapproved because the owners were embroiled in zoning disputes and subject to a fraud investigation. The department further noted that the group home was used only as a "last resort" for offenders who would otherwise be homeless.

Notwithstanding the group home owners' difficulties, it is questionable whether the department may disallow Mr. Douglas's proposed group home residence when the department apparently currently allows other offenders to stay there. Given that Mr. Douglas has been held for more than a year past his early release date, Mr. Douglas is arguably in a "last resort" situation. Furthermore, the department has not demonstrated any community safety or community custody violation issues that would otherwise justify withholding approval of the residence on statutory grounds. *See* RCW 9.94A.728(d).

The department has not responded to Mr. Douglas's motion for discretionary review. The department is directed to file a substantive response that includes discussion of the concerns noted above. The response must be filed by September 14, 2009. Mr. Douglas may file a reply not later than September 28, 2009.

Steven Goff
COMMISSIONER

August 19, 2009

MARCH 20TH, 2010

NIELSON, BROMAN, & KOCH (CHRISTOPHER H. GIBSON #25097)
1908 E. Madison St
Seattle, WA 98122

RE: STATE V. DOUGLAS COA NO. 39429-4-II

Dear Mr. Gibson,

I have read your opening brief and I must say I am disappointed in the level of effort and tactics you have used in this brief. I have sent it to a professional who specializes in review of cases. I expect he will come up with the same conclusion I did. Do you think you could have been a little more diligent in getting the missing transcript, filed Jan 12th 2009 under 04-1-05086-5? My last Appellate attorney had asked the transcript be filed under that cause in her request. I am now requesting you to do the following:

(1) File a Motion to Ammend Opening Brief and Extension of time to File as you suggested earlier.
(2) Get the Jan. 12th 2009 Transcript. (send me a copy)
(3) Review Brief being sent to you and one allready sent.
(4) Remove all references in which you negate the Facts, Per Brief Sent to You.
(5) Refile w/ Ammended Information

In the event you refuse or fail to follow through with these actions a BAR complaint will be filed and a Civil action will be filed against your firm for

ineffective assistance of counsel. I have put in 100's of hours on this cause and I expect you to be diligent in presenting facts that are beneficial to this cases dismissal. I see why you are asking me to cancel my appeal in your last letter. You need to realize, I am not naive nor swayed by dirty politics. I wish you would have spoken to me before filing that garbage.

If you choose to withdraw as counsel and assign a different attorney I would appreciate it. I am not aware of who you spoke to about this case but I am sure you have been misinformed as to the circumstances surrounding it. Check the Facts Carefully. I request your prompt response and hope you will do the right thing in the future. There is no reason this case should not be dismissed for Constitutional Misconduct of prosecution and lack of due process.

Respectfully Submitted,

X [signature]

JAMES PHILIP DOUGLAS - DEFENDANT
PIERCE COUNTY CORRECTIONS #200831503-9
910 TACOMA AVE SO.
TACOMA, WA 98402