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**COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II**

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	)	<b>40722-1</b>
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David Douglas Moeller	)	
	)	<b>PERSONAL RESTRAINT PETITION</b>
Petitioner	)	
	)	
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A. Status of Petitioner: I, David Douglas Moeller, apply for relief from confinement. I am now in custody serving a sentence upon conviction of a crime.

I was sentenced October 23, 2009 following a jury trial in the Pierce County Superior Court, Cause No. ~~08-105488-0~~ <sup>DM 08-1-05488-0</sup>, for first degree rape, second degree assault and unlawful imprisonment. My lawyer at trial was Richard K. Whitehead, WSBA # 7896, 949 Market Street, Suite 334, Tacoma, WA 98402-3696. The sentencing judge was the ~~Hon. Ronald Culpepper~~ <sup>DM Bryan E. Chushcoff</sup>.

My direct appeal is currently pending before this Court. Appeal No. 39933-4-II, filed October 27, 2009. My counsel on appeal is Jordan B. McCabe, WSBA # 27211, P.O. Box 7212, Bellevue, WA 98008-1212. This personal restraint petition supplements my direct appeal which includes a claim of error that involves matters outside of the record. *See State v. McFarland*, 127 Wn.2d 322, 338 n.5, 899 P.2d 1251 (1995). My appellate counsel helped me prepare this petition.

B. Grounds for Relief:

1. I did not receive a fair trial because my trial counsel did not exercise due diligence to contact witnesses and preserve evidence supporting my alibi defense. With no supporting evidence, counsel advised me not to testify. Therefore, the jury never heard my side of the story, and I was convicted based on the alleged victim's story and shocking photographs of her injuries. Many of the facts showing lack of due diligence in investigating — things I told counsel and the investigator and things they said to me — are not in the record.

2. The following facts are important when considering my case.

(a) I am convicted of assaulting and raping my former girlfriend, Debbie Stegner, and keeping her in our apartment from Friday to Monday morning. I did not do this. I informed my trial lawyer from the outset that Debbie came home on the Friday evening already beaten up. A lady living in our apartment complex brought her home.

(b) The apartment complex is in a rough neighborhood where people move a lot. It was essential to investigate immediately and locate this woman to back me up.

(c) Also, I drove Debbie to the emergency room that Friday night, but she refused to go in for treatment. There should be security video from the entrance to the

ER showing my car pulling in and leaving again. Again, counsel did not follow this up. This video may still be available. My mother is checking this for me.

(d) My trial was delayed 9 ½ months after my arraignment. After several months without trial, my original lawyer, Mr. Sepi, was furloughed due to illness and Mr. Whitehead took over. This long delay may explain why the lawyers did not immediately follow up on the alibi defense, thinking there was plenty of time.

3. The following decisions support my claim of ineffective assistance of counsel.

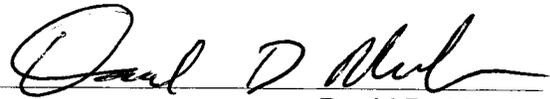
To prevail on a claim of ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness based on consideration of all the circumstances, and that the deficient performance prejudiced the trial. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); *State v. Nichols*, 161 Wn.2d 1, 8, 162 P.3d 1122 (2007). The reasonableness inquiry presumes effective representation and requires the defendant to show the absence of legitimate strategic or tactical reasons for the challenged conduct. *McFarland*, 127 Wn.2d at 336. Prejudice means that there is a reasonable probability that the outcome would have been different but for the deficient performance. *In re Pers. Restraint of Pirtle*, 136 Wn.2d 467, 487, 965 P.2d 593 (1998).

4. This petition is the best way to get relief because the record on appeal does not include the evidence supporting my alibi defense or my interactions with trial counsel that should have prompted them to move swiftly to identify and secure corroborating evidence.

C. Statement of Finances: I request the court to waive the filing fee for this petition because I am indigent. Please see the Order of Indigency filed in Appeal No. 39933-4-II.

D. Request For Relief: I want this court to vacate my conviction. As discussed in my direct appeal, the court should dismiss the charges because of the speedy trial violation. Alternatively, the court should dismiss the charges because I was denied ineffective assistance of counsel resulting in the irretrievable loss of essential defense evidence. At minimum, the court should grant me a new trial to correct the cumulative prejudicial errors in the first trial. Please see Appellant's Brief in Appeal No. 39933-4-II.

E. Declaration Of Petitioner: I declare that no notary is available because I am incarcerated. I declare that I have examined this petition and to the best of my knowledge and belief it is true and correct.



David D. Moeller

DATE: 5-12-2010

**COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II**

David Douglas Moeller  
Petitioner

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40722-1

**PERSONAL RESTRAINT PETITION**

A. Status of Petitioner: I, David Douglas Moeller, apply for relief from confinement. I am now in custody serving a sentence upon conviction of a crime.

I was sentenced October 23, 2009 following a jury trial in the Pierce County Superior Court, Cause No. ~~08-105488-0~~ <sup>DM 08-1-05488-0</sup>, for first degree rape, second degree assault and unlawful imprisonment. My lawyer at trial was Richard K. Whitehead, WSBA # 7896, 949 Market Street, Suite 334, Tacoma, WA 98402-3696. The sentencing judge was the ~~Hon. Ronald Culpepper.~~ <sup>DM Bryan E. Chushcoff.</sup>

My direct appeal is currently pending before this Court. Appeal No. 39933-4-II, filed October 27, 2009. My counsel on appeal is Jordan B. McCabe, WSBA # 27211, P.O. Box 7212, Bellevue, WA 98008-1212. This personal restraint petition supplements my direct appeal which includes a claim of error that involves matters outside of the record. *See State v. McFarland*, 127 Wn.2d 322, 338 n.5, 899 P.2d 1251 (1995). My appellate counsel helped me prepare this petition.

B. Grounds for Relief:

1. I did not receive a fair trial because my trial counsel did not exercise due diligence to contact witnesses and preserve evidence supporting my alibi defense. With no supporting evidence, counsel advised me not to testify. Therefore, the jury never heard my side of the story, and I was convicted based on the alleged victim's story and shocking photographs of her injuries. Many of the facts showing lack of due diligence in investigating — things I told counsel and the investigator and things they said to me — are not in the record.

2. The following facts are important when considering my case.

(a) I am convicted of assaulting and raping my former girlfriend, Debbie Stegner, and keeping her in our apartment from Friday to Monday morning. I did not do this. I informed my trial lawyer from the outset that Debbie came home on the Friday evening already beaten up. A lady living in our apartment complex brought her home.

(b) The apartment complex is in a rough neighborhood where people move a lot. It was essential to investigate immediately and locate this woman to back me up.

(c) Also, I drove Debbie to the emergency room that Friday night, but she refused to go in for treatment. There should be security video from the entrance to the

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(d) My trial was delayed 9 ½ months after my arraignment. After several months without trial, my original lawyer, Mr. Sepi, was furloughed due to illness and Mr. Whitehead took over. This long delay may explain why the lawyers did not immediately follow up on the alibi defense, thinking there was plenty of time.

3. The following decisions support my claim of ineffective assistance of counsel.

To prevail on a claim of ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness based on consideration of all the circumstances, and that the deficient performance prejudiced the trial. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); *State v. Nichols*, 161 Wn.2d 1, 8, 162 P.3d 1122 (2007). The reasonableness inquiry presumes effective representation and requires the defendant to show the absence of legitimate strategic or tactical reasons for the challenged conduct. *McFarland*, 127 Wn.2d at 336. Prejudice means that there is a reasonable probability that the outcome would have been different but for the deficient performance. *In re Pers. Restraint of Pirtle*, 136 Wn.2d 467, 487, 965 P.2d 593 (1998).

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E. Declaration Of Petitioner: I declare that no notary is available because I am incarcerated. I declare that I have examined this petition and to the best of my knowledge and belief it is true and correct.

  
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David D. Moeller

DATE: 5-12-2010