

*Original  
PRP*

STATE OF WASHINGTON, )  
Plaintiff, )  
v. )  
JONATHAN LUCAS, )  
Defendant. )  
\_\_\_\_\_ )

NO.   
*09-1-01509-1*  
MOTION TO DISMISS  
Pursuant to RAP RULE  
18.9 (C) (3), 3.2 (E)  
5.1 , 5.2, 5.3,5.4

1. IDENTITY

Defendant Jonathan Lucas alleges that the Plaintiff did willfully and knowingly fail to properly submit his notice of Direct Appeal which is guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution. Failure to file in the Court of Appeals Division 2 in a timely manner put the defendant in jeopardy of an effective appeal and handicapped all future appellate procedures including collateral attack as a pro se petitioner.

2. GROUNDS

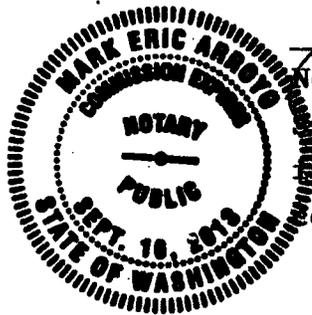
( SEE AFFIDAVIT IN SUPPORT OF MOTION TO DISMISS )

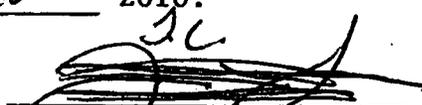
3. RELIEF SOUGHT

Defendant Jonathan Lucas respectfully requests this Honorable Court to grant this MOTION TO DISMISS with prejudice and have him immediately released from confinement due to the fact that the Plaintiff has violated his constitutional rights to an appeal.

  
JONATHAN LUCAS #977864

SUBSCRIBED AND SWORN to before me this 8th  
day of November 2010.



  
Notary Public in and for the  
State of Washington, Residing  
in Walla Walla, Washington. My  
commission expires: 2013



AFFIDAVIT IN SUPPORT OF MOTION

TO DISMISS

WASHINGTON COURT OF APPEALS DIVISION 2

STATE OF WASHINGTON, )  
Plaintiff, )  
V. )  
JONATHAN LUCAS, )  
Defendant. )

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NO.   
09-1-01509-1  
AFFIDAVIT IN SUPPORT OF  
MOTION TO DISMISS

In the present case, a Notice of Appeal to the Court of Appeals Division 2 was filed on March 17, 2010 on behalf of Jonathan Lucas by his trial attorney James Sowder WSBA #9072. (SEE Order of Indegence and Notice of Appeal, Exhibit 1)

On March 8 and March 9 of 2010, Mr. Lucas' case was heard before a jury. He was found guilty on March 9, 2010. On March 17, 2010 the defendant was sentenced to 73 months of confinement. The Notice of Appeal was timely filed in the Clark County Superior Court on March 17, 2010. (SEE Exhibit 2)

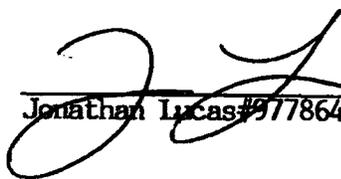
On March 19, 2010, Mr. Sowder informed Mr. Lucas that his Notice of Appeal had been filed. (See Exhibit 3); On April 2, 2010 Mr. Lucas was trasported to Washington Cprrection Center, On May 20, 2010 he was then transported to Washington State Penitentiary were he is currently confined. Upon arriving to Washington Correction Center in Shelton, Wa. Mr. Lucas should have been contacted by his Appellate Counsel within the first two weeks but this did not happen. When Mr. Lucas was transported to Washington States Penitentiary in Walla Walla, Wa. he still had yet to be informed about the status of his Appeal and/or representattion for that Appeal.

In August of 2010 Mr. Lucas contacted his Trial Counsel regarding this very serious matter(See Trial Counsel's response in Exhibit 4).Counsel submitted Mr. Lucas' Notice of Appeal and it was filed on March 17, 2010,However because of the Clark County Superior Court Clerks Negligence Mr. Lucas has been deprived of his Rights to a Direct Appeal and because this was the faults of the Superior Court a Dismissal with Prejudice is Warranted.

According to the Rules of Appellate Procedure(RAP Rule 5.4(B),9.1,9.6) Mr. Lucas' Appellate Attorney should have talk to his Trial Attorney and Ordered transcripts of the Court Proceedings(Hearings,Motions,ETC.) that took place in the Clark Conuty Superior Court.Papers from the Court File should have been sent to the Court of Appeals,the Record should have been finished being order withing 30 days after the Notice of Appeal was filed.which was March 17, 2010. Next the Court Reporters should have sent the transcripits to Mr. Lucas' Appellate Attorney, The Courts have to file the transcripits within 90 days of the Notice of Appeal if an Extension of Time has not been granted by the Court of Appeals. The Appeallate Brief is Due 45 days after all Transcripts are recieved, The Prosecutor has 60 Days to file their Respondent Brief and the Appellate has 30 days to file a Reply Brief if it is necessary per RAP RULE 10.2.

In the present case Mr. Lucas' Trial Attorney filed his Notice of Appeal on March 17, 2010 in the Clark County Superior Court, from that moment Mr.Lucas became an Appellate and the clock started ticking on his Appeal, It also bacame at that moment the Clark County Superior Courts job to ensure that the proper steps were taken so that Mr. Lucas' would not be denied his Federal Constitutional Fourteenth Amendment Right to Due Process and Right to an Appeal that did not happen in this case hence the reason for this Motion to Dismiss with Prejudice. This is a clear Violation by the Clark County Superior Court Clerks of the Rules of Appellate Procedure and the Due Process Rights of the Fourteenth Amendment. Mr. Lucas' case should be Dismissed wth Prejudice. Because of the Clark County Superior Court Clerks Negligence Mr. Lucas was never Appointed an Appellate Attorney nor did the Clark County Superior Court ask for an Extension to submit Mr. Lucas' Notice of appeals and Transcripts.For this Reason the Action of the Superior Court Clerks should be faced with a "Time Bar", The same standard that would apply to Mr. Lucas and His Trial Counsel had the proper procedures not been followed and For this Reason Mr. Lucas' case Must be Dismissed With Prejudice.

I Jonathan Lucas declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge and being executed on this 8 day of November, 2010. at Washington State Penitentiary in the county of Walla Walla, Wa.

  
Jonathan Lucas #977864

Subscribed and Sworn to before me this 8 day of November, 2010



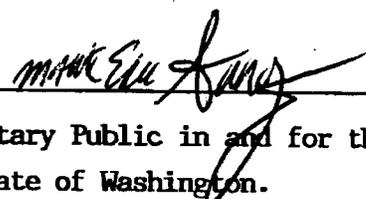
  
Notary Public in and for the State of Washington.  
Residing in Walla Walla, Wa.  
My Commission Expires 2013.

EXHIBIT 1

A

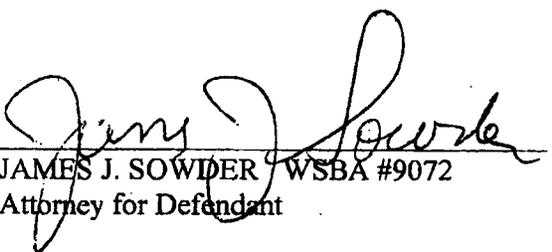
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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF CLARK**

STATE OF WASHINGTON,	)	
	)	NO. 09-1-01509-1
Plaintiff,	)	
v.	)	NOTICE OF APPEAL
	)	TO COURT OF APPEALS -
JONATHAN MARK LUCAS,	)	DIVISION II
Defendant.	)	

Defendant seeks review by the Court of Appeals of the State of Washington, Division II, of the Judgment and Sentence, and every part thereof, entered on March 17, 2010, in Clark County Superior Court. A copy of the judgment and sentence is attached.

DATED this \_\_\_\_\_ day of March, 2010.

  
 JAMES J. SOWDER WSBA #9072  
 Attorney for Defendant

Service accepted, consent to entry and notice of presentation waived.

\_\_\_\_\_  
KASEY T. VU WSBA# 31528  
Deputy Prosecuting Attorney

Address of Defendant: Resident of Department of Corrections

NOTICE OF APPEAL TO COURT OF APPEALS

James J. Sowder - Attorney at Law  
1600 Daniels Street - P.O. Box 27  
Vancouver, Washington 98666-0027  
Phone: (360) 695-4792 - Fax: 695-0227

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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF CLARK**

STATE OF WASHINGTON, )  
Plaintiff, ) NO. 09-1-01509-1  
v. )  
JONATHAN MARK LUCAS, )  
Defendant. )  
DECLARATION OF SERVICE

I, JAMES J. SOWDER, certify and declare under the penalty of perjury under the laws of the State of Washington that the following is true and correct:

On the \_\_\_ day of March, 2010, I personally filed with the Clerk of the Court and gave copies of the Notice of Appeal as well as a copy of this declaration to the following:

Kasey T. Vu  
Deputy Prosecuting Attorney  
PO Box 5000  
Vancouver, WA 98666-5000

Jonathan Mark Lucas  
Clark County Jail  
PO Box 1147  
Vancouver, WA 98666

DATED this \_\_\_ day of March, 2010.

\_\_\_\_\_  
JAMES J. SOWDER WSBA #9072  
Attorney for Defendant

EXHIBIT 2

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7 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**  
**IN AND FOR THE COUNTY OF CLARK**

8 STATE OF WASHINGTON, ) No. 09-1-01509-1  
9 Plaintiff, )  
10 v. ) ORDER OF INDIGENCE  
11 JONATHAN MARK LUCAS, )  
12 Defendant. )

13 **THIS MATTER** having come on regularly before the undersigned judge upon the motion of  
14 the defendant for an order authorizing the defendant to seek review at public expense and the Court  
15 having considered the records and files herein, now therefore,

16 **IT IS HEREBY ORDERED** that the defendant shall be allowed to appeal from the certain  
17 judgment and sentence and every part thereof in the above-entitled cause number, entered on March  
18 17, 2010, at public expense to include the following:

- 19  
20 1.) All filing fees:  
21 2.) Attorney fees and the cost of preparation of briefs (including copying costs);  
22 23 3.) Costs of preparation of the statement of facts which shall contain the verbatim report of the  
24 following proceedings, all of which are necessary for review:

25 (X) Pre-Trial Hearings Date(s) October 27, 2009  
26 Waive Speedy Trial Judge *arraignment docket Judge*  
27

ORDER OF INDIGENCE - 1

1			
2	(X) Trial (all proceedings and opening)	Date(s) Judge	March 8, 2010 & March 9, 2010 Lewis
3			
4	( ) Hearing on Post-Trial Motions	Date(s) Judge	_____ _____
5			
6	(X) Sentencing Hearing	Date(s) Judge	March 17, 2010 Lewis
7			
8	( ) Other	Date(s) Judge	_____ _____

9 4.) Cost of a copy of the above record for the joint use of defendant's counsel and the  
10 prosecuting attorney; and

11 5.) Costs of the preparation of necessary clerk's papers.

12 **IT IS FURTHER ORDERED** counsel on appeal, or his representative, is authorized to  
13 remove the clerk's file from the Clerk's Office for the purpose of reproducing clerk's papers and  
14 designating the record for review.

15 **AND IT IS FURTHER ORDERED** that trial counsel is allowed to withdraw and that  
16 counsel on appeal be appointed by the Court of Appeals pursuant to RAP 15.2. Payment for  
17 expenses of this appointment is authorized under contract with the Office of Public Defense.  
18 There are no co-defendants.  
19

20 DATED this \_\_\_\_\_ day of March, 2010.

21 \_\_\_\_\_  
22 JUDGE ROBERT LEWIS

23 Presented by:

24 \_\_\_\_\_  
25 JAMES J. SOWDER WSBA # 9072  
26 Attorney at Law

27 ORDER OF INDIGENCE -

James J. Sowder - Attorney at Law  
1600 Daniels Street - P.O. Box 27  
Vancouver, Washington 98686-0027  
Phone: (360) 695-4792 - Fax: 695-0227

**EXHIBIT 3**

**James J. Sowder**  
**Attorney at Law**

March 19, 2010

Jonathan Lucas  
Clark County Jail  
PO Box 1147  
Vancouver, WA 98660

Dear Mr. Lucas:

Enclosed is a copy of the Judgment and Sentence in your case. Your appeal has been filed. The office of public expense will assign an attorney to you. We will give to them whatever file or material that person needs.

Good luck.

Sincerely,

A handwritten signature in black ink that reads "James J. Sowder". The signature is written in a cursive, flowing style.

JAMES J. SOWDER  
Attorney at Law

JJS:jah

Enclosure

EXHIBIT 4

**James J. Sowder**  
**Attorney at Law**

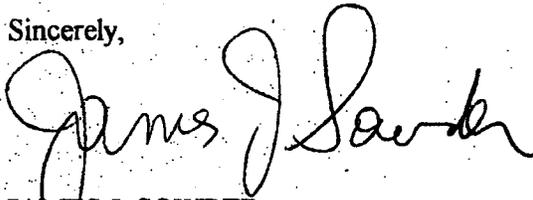
August 31, 2010

Jonathan Lucas, DOC #977864  
Washington State Penitentiary  
1313 North 13th Avenue  
Walla Walla, WA 99362

Dear Mr. Lucas:

I asked about the appellate counsel. Apparently, paperwork failed to get transferred to the right people for appointment of counsel. That matter has now been corrected. I would assume within the next 30 days or so you will hear from the appellate counsel.

Sincerely,



JAMES J. SOWDER  
Attorney at Law

JJS:jah

**James J. Sowder**  
**Attorney at Law**

August 30, 2010

Sean Flynn, Managing Attorney  
Indigent Appellant Program  
Office of Public Defense  
PO Box 40957  
Olympia, WA 98504-0957

Re: Appeal of State v. Jonathan Mark Lucas  
Cause No. 09-1-01509-1

Dear Mr. Flynn:

I represented Jonathan Lucas in Clark County Superior Court Cause No. 09-1-01509-1. He was found guilty and a notice of appeal with an order of indigence was filed on March 17, 2010.

Mr. Lucas has advised he has not been contacted by his appellate attorney and in my search of the Washington State Court's website I did not find that an attorney has been assigned. Could you please clarify this issue?

You can send a response by email at [j.sowder@comcast.net](mailto:j.sowder@comcast.net).

Sincerely,

JAMES J. SOWDER  
Attorney at Law

JJS:rdg

cc: Jonathan Lucas

## WASHINGTON APPELLATE PROJECT

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1511 Third Avenue, Suite 701 · Seattle, WA 98101  
(206) 587-2711 or toll free (877) 587-2711  
Fax (206) 587-2710

September 24, 2010

Jonathan M. Lucas (DOC 977864)  
Washington State Penitentiary  
1313 N. 13<sup>th</sup> Ave  
Walla Walla, WA 99362

Re: State v. Lucas, (CoA 41131-8-II)

Dear Mr. Lucas:

Thank you for your letter of September 16<sup>th</sup> and the questions regarding your pending appeal.

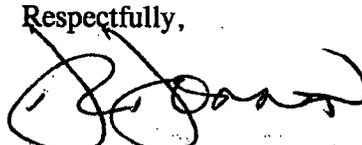
It appears that after filing your Notice of Appeal right after sentencing on March 17<sup>th</sup>, the file was never sent to the Court of Appeals until August 27<sup>th</sup>. This is clearly contrary to the court rule that requires the file be transferred to the appellate court within two weeks. It is the Court of Appeals that appoints counsel, so they did not appoint our office until August 31<sup>st</sup>.

We will certainly do what we can to try to make up this lost time, but it will still take weeks to obtain the transcripts and superior court pleadings. It appears from a brief review of the docket that your case has taken several twists and turns which may present significant issues for the appellate court, but will require additional time for briefing.

If you have information pertaining to the appeal, now would be the time to send it along. We can review that along with the transcripts, research the appropriate issues and file a brief with the Court of Appeals. The more you can do to confirm what you are seeking on appeal and where you believe the superior court erred, the better we can do in presenting your claims.

Maureen Cyr of our office will oversee your file while we order and await the transcripts. If you have any more questions, you can write her directly at the address above.

Respectfully,



David L. Donnan  
Attorney at Law



23

**FILED**

2010 NOV 15 PM 2: 02

Sherry W. Parker, Clerk  
Clark County

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

STATE OF WASHINGTON,	)	
	)	NO. 09-1-01509-1
Plaintiff,	)	
	)	Court of Appeals No. 41131-8-II
vs.	)	
	)	DECLARATION OF MAILING
JONATHAN M. LUCAS,	)	
	)	
Defendant.	)	

I declare under penalty of perjury under the laws of the State of Washington that on this date I sent by regular U.S. Mail copies of the attached Motion to Dismiss with attachments, received by the court on November 12, 2010, and this declaration, to the prosecutor and appellate counsel; and a copy of this declaration only, to defendant, as addressed below:

Kasey Vu  
Deputy Prosecuting Attorney  
PO Box 5000  
Vancouver, WA 98666-5000  
(via courier)

Jonathan Lucas DOC 977864  
Washington State Penitentiary  
1313 N 13<sup>th</sup> Avenue, F-E-104  
Walla Walla, WA 99362

Maureen Cyr  
Attorney at Law  
1511 Third Avenue, #701  
Seattle, WA 98101

DATED this 15<sup>th</sup> day of November, 2010.

  
\_\_\_\_\_  
Judicial Assistant, Dept. 9

FILED

2010 NOV 15 PM 2:02

Sherry W. Parker, Clerk  
Clark County

2

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JONATHAN LUCAS, )  
 )  
 Defendant. )

Cause No. 09-1-01509-1

CITATION

Please note that the following matter will be brought before the Court for hearing:

MATTER: Consideration of Motion to Dismiss

DATE OF HEARING: Friday, December 17, 2010

TIME: 9:00 a.m.

JUDGE: Robert Lewis

COURTROOM: Arraignment Courtroom

DATED this 12<sup>th</sup> day of November, 2010.

  
\_\_\_\_\_  
Judge Robert Lewis

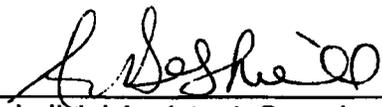
I certify under penalty of perjury under the laws of the State of Washington that on this date I sent a copy of this Citation to the parties addressed below:

Kasey Vu  
Deputy Prosecuting Attorney  
PO Box 5000  
Vancouver, WA 98666-5000  
(via courier)

Maureen Cyr  
Attorney at Law  
Washington Appellate Project  
1511 Third Avenue, #701  
Seattle, WA 98101

Jonathan Lucas, #977864  
Washington State Penitentiary  
1313 N 13<sup>th</sup> Avenue, F-E-104  
Walla Walla, WA 99362

Dated: 11-15-10

Signed   
Judicial Assistant, Superior Court #9

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR CLARK COUNTY

JUDGE ROBERT LEWIS  
PROS ATTY DODDS / Harvey (P)  
DEFENSE ATTY DONNAN, DAVID  
REPORTER CD-VIDEO  
CLERK JOHNSON / STEINWAND  
INTERPRETER \_\_\_\_\_

CAUSE NO. 09-1-01509-1  
STATE OF WASHINGTON  
VS.  
LUCAS, JONATHAN  
KA \_\_\_\_\_ DOB \_\_\_\_\_  
DATE: DECEMBER 17, 2010 TIME: 1035  
P.O., \_\_\_\_\_

ASSIGNED DEPT # 5 Transferred to Dept: \_\_\_\_\_  
**REVIEW** (Deft mtn to dismiss)

Defendant Appeared Yes/No \_\_\_\_\_ In Custody Yes/No \_\_\_\_\_ Warrant Authorized \_\_\_\_\_ Warrant Outstanding \_\_\_\_\_  
Deft Answers to True Name as Charged \_\_\_\_\_ Advised of Civil and Constitutional Rights \_\_\_\_\_  
Charges \_\_\_\_\_  
Referral for financial Screening/Interview \_\_\_\_\_ Attorney \_\_\_\_\_ Appointed / Retained / Waived  
Personal Recog \_\_\_\_\_ Suprvsd Rels \_\_\_\_\_ Book & Rels \_\_\_\_\_ Interview for Suprvsd Rels \_\_\_\_\_  
Release is \_\_\_\_\_ Deft is Remanded to Jail \_\_\_\_\_ Bond Exonerated \_\_\_\_\_ NEW BAIL SET \$ \_\_\_\_\_  
Bail Set at \$ \_\_\_\_\_ With conditions Set \_\_\_\_\_ To Be Set \_\_\_\_\_ Same as previously set \_\_\_\_\_ Posted by \_\_\_\_\_  
Diversion Refr/ Confirmation \_\_\_\_\_ Waiver speedy trial signed \_\_\_\_\_ Stay Grntd \_\_\_\_\_ PV: Admit \_\_\_\_\_ Deny \_\_\_\_\_ Set Hrg \_\_\_\_\_  
Next Court Appearance 1-5-11c Time 900 For Arraign \_\_\_\_\_ Omnibus \_\_\_\_\_ PV \_\_\_\_\_ COP \_\_\_\_\_  
PV is tracking with \_\_\_\_\_ Trial in Dept # \_\_\_\_\_ Other MTW to dismiss

**MOTION F/CONTINUANCE:** State's / Deft's / Stipulated / Calendar conflict Granted \_\_\_\_\_ Denied \_\_\_\_\_  
Trial reset within speedy trial time \_\_\_\_\_ Waiver of Speedy Trial \_\_\_\_\_ sgnd  
OVER TO/TRIAL DATE: \_\_\_\_\_ [ \_\_\_\_\_ ] for Reset Trial Date \_\_\_\_\_ Dept # \_\_\_\_\_  
Omnibus Hearing Date reset for: \_\_\_\_\_ Time: \_\_\_\_\_ Dept # \_\_\_\_\_

**REVIEW OF RELEASE:**  
Motion to Reduce Bail \_\_\_\_\_ Granted \_\_\_\_\_ Denied \_\_\_\_\_  
NEW BAIL \$ \_\_\_\_\_ With Conditions Set / Return to Court for Conditions.  
Supervised Release \_\_\_\_\_ granted Personal Recog \_\_\_\_\_ granted Interview for Suprvsd Rels \_\_\_\_\_  
\_\_\_\_\_ Need to verify address or other information prior to consideration for release.

**REVIEW CASE STATUS/DISCOVERY ISSUES:**  
Motion for Appointment of: Expert / Investigator \_\_\_\_\_ Granted \_\_\_\_\_ Denied \_\_\_\_\_ Order sgnd  
Additional funds for Investigator \_\_\_\_\_ Granted \_\_\_\_\_ Denied \_\_\_\_\_  
Interview of witnesses to be completed by \_\_\_\_\_  
Requested discovery to be provided by \_\_\_\_\_

transport order needed

