

**FILED**

JUL 27 2016

Superior Court  
Linda Myhre Enlow  
Thurston County Clerk

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THURSTON COUNTY  
PROSECUTING ATTORNEY  
JUL 27 2016  
BY \_\_\_\_\_  
TIME \_\_\_\_\_

**Case No.: 48672-5-II**

(Thurston County Superior Court # 13-01891-1)

**COURT OF APPEALS, DIVISION TWO  
OF THE STATE OF WASHINGTON**

RECEIVED  
16 JUL 27 P4:40  
THURSTON  
SUPERIOR COURT

Cynthia Sue Miller,

Petitioner.

NO. \_\_\_\_\_

**PERSONAL RESTRAINT  
PETITION**

FILED  
COURT OF APPEALS  
DIVISION II  
2016 JUL 29 PM 2:12  
STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY

**A. STATUS OF PETITIONER**

I, Cynthia Sue Miller c/o Law Office of William A. Romaine, 16404 Smokey Point Boulevard # 302, Arlington, Washington 98223, apply for relief from confinement. I am now in custody serving a sentence upon conviction, after trial, of crimes in the Superior Court of the State of Washington, County of Thurston, Carol Murphy, Judge Presiding, and was sentenced on March 2, 2016 upon conviction of the following offenses:

1. Assault of a Child in the First Degree with Domestic Violence Enhancement
2. Assault of a Child in the First Degree with Domestic Violence Enhancement
3. Assault of a Child in the Second Degree with Domestic Violence Enhancement
4. Assault of a Child in the Third Degree with Domestic Violence Enhancement
5. Criminal mistreatment in the Fourth Degree with Domestic Violence Enhancement

6. Assault of a Child in the Second Degree with Domestic Violence  
Enhancement

I was represented at trial by William A. Romaine, Attorney at Law, 16404 Smokey Point Boulevard #302, Arlington, Washington 98223.

I appealed the decision of trial court to the above-entitled court and my lawyer for my appeal is William A. Romaine, Attorney at Law, 16404 Smokey Point Boulevard #302, Arlington, Washington 98223. This appeal is still pending in the above-entitled court.

Since my conviction I have not asked a court for some relief from my sentence other than I have already written above.

B. GROUNDS FOR RELIEF:

I claim that I have reason for this court to grant me relief from the conviction and sentence described in Part A.

Pursuant to Washington Rules of Appellate Procedure, Rule 16.4(c)(2) my current restraint by judgment of conviction and sentence in the Washington State Superior Court, County of Thurston is unlawful if:

The conviction was obtained or the sentence or other order entered in a criminal proceeding or civil proceeding instituted by the state or local government was imposed or entered in violation of the Constitution of the United States or the Constitution or laws of the State of Washington

The conviction in my case was obtained by a violation of Amendment XIV of the United States Constitution that prohibits states from depriving any person of life, liberty, or property without due process of law. In its holding in *Brady vs. Maryland* 373 U.S. 83, 85 – 86 (1963) the United States Supreme Court ruled that where the state withholds potentially exculpatory evidence from a defendant in a criminal trial, intentionally or otherwise, it violates that defendant's right to due process secured by Amendment XIV. In spite of that right to due process, I was convicted after a non-jury trial for physically assaulting a young girl in my custody, primarily on the basis of injuries to that girl after a forensic physical examination was done upon her person by or on behalf of Thurston County Authorities. The evidence available to me at this time suggests that at all times material, the Thurston County Prosecutor knew, or should have known that another individual: Kenneth Spears, was under investigation for crimes of assault against the same minor victim I was accused of and being tried for assaulting. I am informed and believe that at no time prior to my trial was I or my legal counsel made aware of the investigation into that other individual's conduct towards the same minor child

victim. I am informed and believe based upon information communicated to my attorney on June 17, 2016 by the Thurston County Prosecutors' Office that this individual has since confessed to assaulting that young girl. The withholding of information from me concerning the investigation into Kenneth Spears' conduct respecting the minor child victim seriously prejudiced my ability to investigate whether or not the injuries to the minor child victim that were attributed to me at trial were actually caused by Kenneth Spears during his assault of the minor child. Had this information not been suppressed by the prosecutorial authorities I am very confident that the outcome of my trial would have been favorable to me.

2. The following facts are important when considering my case. (After each fact statement put the name of the person or persona who know the fact and will support your statement of the fact.:

a. I was found guilty after trial by court in the above-entitled matter on January 21, 2016 and convicted on March 2, 2016. (On the record in the above-entitled matter.)

b. Prior to June 17, 2016, neither I, nor my legal counsel was provided with any details concerning an ongoing, active investigation by Thurston County authorities into allegations of physical attacks by Kenneth Spears upon the person of the same minor child against whom I have been convicted of physical assault. (William A Romaine, Attorney at Law and this Petitioner)

c. I am informed and believe that on June 17, 2016 by email message, Meagan Winder: the deputy prosecuting attorney of Thurston County who had represented the office throughout my trial as their trial counsel, advised my legal counsel that Kenneth Spears had admitted his guilt in sexually assaulting the same minor child I was convicted of assaulting. (William A. Romaine, Attorney at Law)

d. My entire defense at trial consisted of my assertion that I had not assaulted the minor child and that the evidence of assault must have been indicative of an assault by someone else. I know Kenneth Spears and recognize that he had numerous opportunities to assault the minor child in my own residence prior to my excluding him from that residence and I am aware that he would have had a number of opportunities to contact and assault her after I excluded him from my residence while she would be on the way to and from school. (This Petitioner's own knowledge)

e. Had I been aware that Kenneth Spears was under investigation for assaulting the minor child prior to my trial, I would have instructed my legal counsel to follow up with a full investigation of the possibility that the physical injuries noted upon forensic examination of the minor child were caused by encounters between the minor and Kenneth Spears. I would also have instructed

my legal counsel to prepare a defense in my case that would have included evidence of the possibility that Kenneth Spears had caused the injuries to the minor child. (Petitioner's own knowledge)

f. I am informed and believe that in the course of investigating my case, my legal counsel interviewed a pediatrician as a consultant expert in the field of forensic evaluation of injuries to minor children occurring as a result of physical or sexual abuse. I am informed and believe that the physician saw the photographs and report of the forensic sexual assault examination done on the minor child against whom I am convicted of assaulting and that this physician expressed the opinion that the injuries depicted were of a nature that would be inflicted by an adult male engaging in a sexual assault of a minor. When this was reported to me by my legal counsel, I did not know that Kenneth Spears was suspected of injuring the minor child and did not inform my legal counsel that this individual could have been a possible suspect. Had I been aware that Kenneth Spears was officially under investigation for the sexual assault of the minor child, I would have immediately advised my legal counsel that the information offered by the expert consultant had independent veracity. As it was, I instructed my legal counsel not to pursue further inquiry with the expert because I could not think of any adult male who might have assaulted the minor child. (Petitioner's own knowledge; William A. Romaine, Attorney at Law)

3. The following reported court decisions (indicate citations if possible) in cases similar to mine show the error I believed happened in my case.

*State v. Davila* 357 P.3d 636, 645 (Wash. 2015)

4. The following statutes and constitutional provisions should be considered by the court. (If none are now, state, "None Known")

United States Constitution, Amendment XIV, section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; *nor shall any state deprive any person of life, liberty, or property, without due process of law*; nor deny to any person within its jurisdiction the equal protection of the laws. [emphasis supplied]

Washington State Constitution, Article I, Section 2:

The Constitution of the United States is the supreme law of the land.

Washington State Constitution, Article I, Section 3:

No person shall be deprived of life, liberty, or property, without due process of law.

Washington Superior Court Criminal Rules of Court, Rule 4.7(a)(3):

Except as is otherwise provided as to protective orders, the prosecuting attorney shall disclose to defendant's counsel any material or information within the prosecuting attorney's knowledge which tends to negate defendant's guilt as to the offense charged.

5. This petition is the best way I know to get the relief I want, and no other way will work as well because: My appeal from the judgment of conviction that has resulted in my being restrained is pending before the above-entitled court, however that appeal is confined to issues existing in the record on appeal. The matter raised by this petition involves issues unknown to me or my counsel during the pretrial and trial periods of this case and that were suppressed by the Thurston County Prosecutor's Office and that are, therefore, not on the record before the above-entitled court. Moreover, the state of the evidence is such that it is likely a hearing under Rules of Appellate Procedure, Rule 16.12 will need to be ordered by this court in order to evaluate this petition and, after that material is developed, judicial economy and the interests of justice would seem to be best served if this court considered all issues on appeal together with the record developed on this Personal Restraint Petition.

Dated: 7-19-16

  
Cynthia Sue Miller, Petitioner.

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ACKNOWLEDGMENT

STATE OF WASHINGTON

COUNTY OF PIERCE

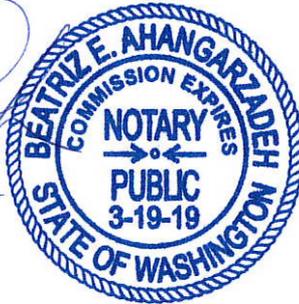
On this day personally appeared before me Cynthia Sue Miller, to me known to be the individual(s) described in and who executed the within and foregoing instrument, and acknowledged that she signed the same as her free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and seal of office this 19 day of July, 2016.

Notary Public residing at N/A

Beatriz E. Ahangarza

Printed Name: BEATRIZ E. AHANGARZADEH



My Commission Expires:

3/19/19

**EXPEDITE** (if filing within 5 court days of hearing)  
 Hearing is set:  
 Date: \_\_\_\_\_  
 Time: \_\_\_\_\_  
 Judge/Calendar: \_\_\_\_\_

FILED  
 COURT OF APPEALS  
 DIVISION II  
 2016 JUL 29 PM 2:12  
 STATE OF WASHINGTON  
 BY \_\_\_\_\_  
 DEPUTY

**SUPERIOR COURT OF WASHINGTON  
FOR THURSTON COUNTY**

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CYNTHIA SUE MILLER Plaintiff(s)

vs.

STATE OF WASHINGTON Defendant(s)

NO. B-1-01891-1  
**AFFIDAVIT/DECLARATION OF SERVICE**

**DECLARATION**

The undersigned is now and at all times herein mentioned was a citizen of the United States and resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above entitled action and competent to be a witness therein.

I declare under penalty of perjury under the laws of the State of Washington that on 07-27-16, 2016, at 4:49pm at Thurston County Clerks Office, Washington, Thurston County, Washington, I duly served the following documents in the above entitled matter upon Court of Administration, by then and there personally delivering a true and correct copy or copies thereof to and leaving same with Thurston County Clerks Office

Clerks Office and Prosecutors Office **DOCUMENTS SERVED** PERSONAL PETITION RESTRAINT

Signed this 27 day of JULY, 2016 at Thurston County Clerks Office, Thurston County, Washington. PROSECUTORS OFFICE AND COURT ADMINISTRATORS

Signature [Signature]  
 Printed Name/Title Ray A Rhoads  
 Address 6829 Jericho St SW  
TUMWATER WA 98512  
 Telephone 360-742-8295