

FILED  
Court of Appeals  
Division II  
State of Washington  
4/24/2019 2:31 PM

NO. 49767-1-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO

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In re the Personal Restraint of

Robert James,

Petitioner.

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REPLY BRIEF OF PETITIONER

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A. ARGUMENT IN REPLY

JAMES HAS PRESENTED COMPETENT EVIDENCE WHICH, IF PROVEN, ENTITLES HIM TO RELIEF.

James has argued in his personal restraint petition that trial counsel's failure to reasonably evaluate the evidence impacted his ability to make a meaningful decision whether to accept the State's plea offer. In support of this argument, James relates in a declaration that trial counsel told him DNA results would greatly benefit the defense case, while trial testimony from the DNA expert demonstrates that counsel misinterpreted the DNA report. Brief of Petitioner, Attachment 1; 3RP 78-79, 83-85. In addition, James's sister states in an affidavit that defense counsel told her the DNA results revealed the existence of another male's DNA, and therefore the case against James was significantly weakened. Brief of Petitioner, Attachment 9.

In order to be granted a reference hearing, a personal restraint petitioner must state with particularity facts which, if proven, entitle him to relief. *In re Rice*, 118 Wn.2d 876, 886, 828 P.2d 1086 (1992). If the petitioner's evidence is based on knowledge in the possession of others, he must present their affidavits containing matters to which the affiant may competently testify. The petitioner's evidence must be based on more than speculation, conjecture, or inadmissible hearsay. *Id.*

The evidence James presents with his personal restraint petition meets this standard. The DNA report and testimony from the expert are in the record. James's declaration includes matters within his knowledge. And the matters within his sister's knowledge are presented in her affidavit.

The State argues in its second supplemental response brief that James's sister's affidavit contains inadmissible hearsay and cannot be relied upon to establish actual prejudice or fundamental defect. This argument mischaracterizes the contents and purpose of the affidavit. While James's sister relates something defense counsel told her, counsel's statements are not offered to prove the truth of those statements, and therefore the affidavit does not contain hearsay. *See* ER 801(c) ("Hearsay" is a statement...offered in evidence to prove the truth of the matter asserted."). It is the fact that counsel made the statements that proves he had not fully investigated the DNA results. James's sister has personal knowledge that the statements were made and can competently testify to that fact.

B. CONCLUSION

For the reasons addressed above, in James's personal restraint petition, and in the briefs previously filed in support of the petition, this Court should grant the requested relief.

DATED this 24<sup>th</sup> day of April 2019.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Catherine E. Glinski".

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CATHERINE E. GLINSKI  
WSBA No. 20260  
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Certification of Service by Mail

Today I caused to be mailed copies of the Reply Brief of Petitioner  
*In re the Personal Restraint Petition of Robert James*, Cause No. 49767-1-  
II as follows:

Robert James DOC# 365127  
Monroe Correctional Complex-TRU  
PO Box 888  
Monroe, WA 98272

I certify under penalty of perjury of the laws of the State of Washington  
that the foregoing is true and correct.



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Catherine E. Glinski  
Done in Manchester, WA  
April 24, 2019

**GLINSKI LAW FIRM PLLC**

**April 24, 2019 - 2:31 PM**

**Transmittal Information**

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